Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No.

In The

Supreme Court of the United States

PATRICIA H. POWELL,

Petitioner,

v.

FIDELITY NATIONAL FINANCIAL, INC./Chicago Title Ins. Co. Through Wm P. FOLEY II, And Individually As Chr. Of The Board And CEO, FIDELITY NAT'L. FIN. CORP.,CHICAGO TITLE INS. CO., FNIS.FNTI CO.; MARK E. SCHIFFMAN, Individually And As SR. VICE PRES., CHICAGO TITLE&TRUST, FNF, And FNF CHIEF LITIGATION COUNSEL; W.DEAN CLOUD, Individually And ASSOCIATE COUNSEL FID. NAT'L. FIN.; MARK J. SARNI, COUNSEL FID. NAT'L. FIN. CORP; MICHAEL E. DULLEA, Individually And As VICE PRES. AND COUNSEL CHICAGO TITLE INS. CO.; CTI'S CONTROLLED ESCROW CO., DOES 1-10,

Defendants.

On Petition For Writ Of Certiorari To The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

Patricia H. Powell 133892
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Novato, California 94947
415.893.0010

QUESTIONS PRESENTED

1. Whether the Ninth Circuit violated the Supremacy Clause by invoking res judicata, primary right-single injury-single cause of action to defeat traditional pleading (1) continuing predicate acts, 18 USC §1961, (2) entity-person enterprise, (3) ongoing pattern of racketeering as a way of doing business (4) and racketeering income (5) to plaintiff's loss and injury;

2. Whether this Court should exercise Constitutionally granted powers to enforce adherence to Congressional intent and 18 USC 1964(c) to protect citizens, banking and commerce from RICO in the sale of title insurance and escrow services, 18 USC §§ 1961, 1962;

3. Whether the Central Dist. Court, Cal. violated 28 USC § §2071, 1651, FRCP 83, 11 by design of LR 27A.4; this rule provides the Cent. Dist. discretionary augmented inherent powers to invoke state law to designate vexatious litigants in lieu of FRCP 11(b), as here, Order barring petitioner from filing any issue raised in any prior complaint in all US district courts against named/unnamed defendants now and forever - all of which are essential to RICO complaints - and $50,000;

4. Whether the Supremacy Clause is violated by designating petitioner vexatious litigant under augmented inherent powers after finding petitioner did not abuse process, local rules or Rule 11(b) LR 27A-4;

5. Whether sister district courts within the same circuit are distinct jurisdictions within the rationale of, and subject to, *Semtek Int'l., Inc. v Lockheed Martin Corp.*, 531 US __, 121 SCt 1021 (2000).

PARTIES TO THE PROCEEDINGS

Plaintiff-petitioner: Patricia H. Powell, #133892, 111A Oliva Ct., Novato, CA 94947 in propria persona (per se in federal practice.) Admitted to practice before this Court 3 November 1999.

Defendants: Fidelity Nat'l. Fin. Inc. and Chicago Title Ins. Co., integrated in 1999-2001 under CEO/Pres. Wm. P. Foley II, Mark E. Schiffman, Chief Lit. Counsel, Mark J. Sarni, and W. Dean Cloud, corporate counsel of Fid. Nat'l. Fin. and Michael E. Dullea, Chicago Title Ins. corporate counsel.

Fidelity Nat'l. Fin./Chicago Title Ins. Co., CEO's and corporate attorneys defend ongoing racketeering charges. Fid. Nat'l. Fin., its CEO and corporate attorneys stand as defendants of new predicate acts

Fidelity Nat'l. Fin. Corp. replaces Alleghany Corp. as parent corporation of Chicago Title Ins. Co. and its subsidiaries. Until this year Fidelity Nat'l. Fin. listed Santa Barbara, California as corporate headquarters, accessible through 17911 Karman Ave, Irvine CA. Defendant Foley, CEO and Pres. of Fid. Nat'l. Fin., removed corporate headquarters and himself from Santa Barbara, California, to 601 Riverside Ave., Jacksonville, Florida.

TABLE OF CONTENTS

QUESTION PRESENTED i

PARTIES TO THE PROCEEDING ii

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES iv

TABLE OF APPENDICES vi

STATEMENT OF JURISDICTION 1

CONSTITUTIONAL, STATUTORY AND RULES RELIED UPON 1

STATEMENT OF THE CASE 1

CONTENTIONS AND ARGUMENT 4

CONCLUSION 13

TABLE OF AUTHORITY

Cases

Allwaste, Inc. v Hecht, 65 F# 1523, 1526 (9th Cir. 1995) 5

Beck v Purpis, 529 US 492 (2000) 7

Gervase v Prudential Securities, 31 Cal. App.4th 1218, 1224 12

Fireman's Fund v Stites, CDOS 6633 (2000) 5

H. J. Inc. v Northwestern Bell Telephone Co., 494 US 299, 239 (1989) 6

Howlett v Rose 496 US 356, 366, 371 (1990) 9

Karlin v Chartwell Healthcare, Inc., 128 F. Supp. 2d 609, 611 (E.D. Mo 2001) 10

Quackenbush v Allstate Ins. Co. 517 US 706, 712, 713 (1996) 9

Republic Ins. Co. v Culbertson 717 F. Supp. 415 (D.C. Va. 1989) 10

Semtek Int'l., Inc. v Lockheed Martin Corp., 531 US __, 121 SCt 1021 (2000)..... i

Sun Savings & Loan Ass'n. v Dierdorff 825 F2d 187 (9th Cir. 1987) 5

United States v Turkette, 452 US 576, 583 (1981) 6

Wilcox v First Interstate Bank of Oregon, N.A. 815 F2d 522, 529 (9th Cir. 1987) 5

Constitution of the United States, Public Law

Constitution of the United States
Art. III § 2 4
Art. IV § 2 ..... 4, 10

Public Law: 91-452 84 STAT 941
(Crime Control Act of 1970) 7, 12

United States Code

18 USC § 1961 ..... 4, 5, 8, 13
§ 1962 ..... 5, 8, 13
§ 656 ..... 7, 13
§ 1344 ..... 7, 13
§ 1341 7
§ 1964(c) 7, 13

28 USC §2071 9

Federal Rules Civil Procedure

Rule 7 10
Rule 8 10
Rule 11(b) 9
Rule 12 (c) 10

Supreme Court Rules

Rule 10 13

U.S. Dist. Court Central District Local Rules

L. R. 27 A.0-27A.4 (83-27A) 9, 11

California Pen. Code

§ 115, 115.5 7

APPENDIX

App. A: MEMORANDUM OF NINTH CIRCUIT
Filed 14 February 2005 .....1 a

App. B: JUDGMENT OF DISTRICT COURT,
NORTHERN DIST. OF CALIFORNIA
Filed 9 September 2003 ..... 3 a

App. C: ORDER DISMISSING COMPLAINT
WITHOUT PREJUDICE; VACATING
HEARING Filed 9 Sept. 2003 .....5 a

App. D: MEMORANDUM OF NINTH CIRCUIT
Filed 27 November 2002 .....13 a

App. E: JUDGMENT UNITED STATES DIST.
COURT, CENTRAL DIST.

DEFENDANTS' MOTION FOR
SANCTIONS; ORDER GRANTING
DEFENDANTS REQUEST TO
DECLARE PLAINTIFF A VEXATIOUS
LITIGANT; ORDER REMOVING
HEARING FROM COURT'S
CALENDAR Filed 22 June 2001 .....20 a

App. I CIVIL MINUTES ORDER DENYING
PLAINTIFF'S MOTION TO AMEND
JUDGMENT (In chambers)
Filed 31 July 2001 .....32 a

App. J CONSTITUTIONAL, STATUTORY
AUTHORITY RELIED UPON .....34 A

App. K NEWSTORY: DAILY NEWS VAN
NUYS 8 Oct 2002

JURISDICTION OF THIS COURT

Jurisdiction of this Court is conferred by Art. III §2 of the U.S. Const. codified as 28 USC § 1254.

Jurisdiction in the Ninth Circuit is conferred by 28 USC §§ 1331 and 1291. The Ninth Circuit Memorandum appealed was filed Feb 14, 2005.

CONSTITUTIONAL, STATUTORY AND RULES RELIED UPON

Federal authority relied upon: Constitution of the United States, Art. VI § 2, Art. III § 2; 28 USC §§ 2071, 1651, 18 USC §1961-1968, (§1964(c)); Federal Rules of Civ. Proc. 7, 8, 11, 12 and 83. Pub. L. 91-452, 84 Stat.922, or Title IX of the Organized Crime Control Act of 1970, and Congressional intent in fashioning that Act. Federal Dist. Court, Central Cal. Local Rules 27A.0-27A.4 (83-27A.1-.4)

STATEMENT OF THE CASE

Fidelity National Fin. Corp. sells informational technology, title insurance and other real estate related product. It claims to have about one-third of the title insurance market, processing relations with 45 of the top 50 U.S. banks and 2,800 small and mid-sized banks; it had revenues of 8.2 billion in 2004, cash flow of 1.2 billion, profits of 342 million for 2004.

The fraud on a federally insured financial institution, 18 USC §§1014, 1344 was committed before FNF merged with (being the smaller corporation at the time) Chicago Title Corp., spun off by Alleghany Corp. FNF's officers could have made restitution for Chicago Title's bank fraud and embezzlement and cleared its inherited liabilities, but did not. In fact, its corporate counsel added state crimes, Cal. P. C.

§§115. 115.5 and extortion in "debt collection" of a $71,000 sanction induced by false pleading. Counsel would neither disburse, nor credit $17,000 held in the subject escrow from 1992 to the present. Fid. Nat'l. Fin. was a major defendant in the attorney general's consumer fraud class action which settled for $50,000,000 - a small price if ever paid. Petitioner was never contacted for restitution of two unrelated escrows within that settlement. Corporate officers have since removed the corporation from Santa Barbara, California to Jacksonville, Florida.

Fidelity National is the focus of the current racketeering charges. Using the same language as each court has so faithfully reproduced, Chicago Title induced sanction of $71,000 of petitioner by the Second App. Dist. for a frivolous appeal, the appeal from state court law and motion dismissing RICO by demurrer, the same demurrer the Ninth Cir. relies on for final judgment on the merits and "res judicata."

After merger, FNF collection attorneys commenced aggressive collection although RICO was pending in one district court or another. Defendant W. Dean Cloud admitted FNF still held (in 2001) $17,000 from the subject escrow which FNF/CTI refused to deliver even on the San Diego Marshal's Orders.

Defendants' litany of "court-ordered escrow" always omits the court-ordered close of that escrow 23 October 1991. Although escrow instructions allowed termination of escrow thereafter, defendants refused to terminate throughout December 1991. Now it is clear the scheme to defraud HomeFed Bank began with falsified financial reports to HomeFed of buyers' deposit of down payment and fees into escrow. Once HomeFed funded the escrow, defendants reallocated enough of the purchase money loan to cover buyers' obligation of down payment and costs "just before

closing escrow" as reported in the only accounting owners were ever given, including the requisite tax reporting forms. Thus, CTI attorneys and escrow officer added embezzlement as an agent of HomeFed, §§ 1014, 1344. To remedy that loss, defendants simply took it out of the escrow. In the end owners received no money from the "sale" of that house and buyers paid $500. for an underpriced $126,500 property.

The predicate act chargeable to defendants Cloud, Foley, Schiffman, Sarni and FNF/CTI is recordation of falsified Writs of Possession/Sale of petitioner's $400,000 unrelated beachfront condo. Originally a $54,000 lien (reflecting the $17,000 CTI refused to disburse) was recorded in nine California counties. Emboldened by dismissal in the Central Dist. defendant Cloud altered that document to $71,00, altered 'lien' for Writ of Possession/Sale, ordered the Sheriff to notice the tenants to vacate and to commence a sheriff's sale. Omitting to provide evidence of a judgment against that ocean front condo, attorney Cloud filed for court order of sale. Under Debt Collection Laws of California real property must have a judgment for sale or possession before court-ordered sale. Attorney Cloud altered court-issued liens to orders of sale and recorded with the Los Angeles Recorders Office, a felony. Cal. Pen. Code §§115, 115.5 and a predicate act of ongoing racketeering, 18 USC §1961. To prevent this loss petitioner was forced to trade a $54,000, 5-year mortgage for a new 30-year $154,000 loan with payments of $1,037 per month instead of $550. It is this continuing injury and financial injury pleaded in the Northern Dist. Court, a new cause of action since it was not committed until 2003.

Altogether, petitioner lost the $126,500 property and its proceeds, $23,000 to these buyers for "interfering with escrow", $83,000 to FNF/CTI by

unlawful debt collection, thirty year's of extra interest payments, the stigma of defending to the state bar for such excessive sanction, loss of a legal career, and now demeaned as vexatious litigant barred any access to any United States federal court "now and forever" to plead any one of the requisite predicate acts of RICO.

Other such cases are cited in the complaint; the attorney general prosecuted class action consumer fraud, against FNF and CTI, and the Insurance Comm'r. fined not only FNF/CTI but several title insurers whose fraud and kickbacks are an ongoing way of doing business. App.K 37a.

Clearly, the Ninth Cir. errs: falsified recordation of documents that impact real property, a felony in California were not committed nor alleged in the Cent. Dist. action and the continuing pattern of criminal activity is not "res judicata". These charges are documented in the Complaint.

CONTENTIONS AND ARGUMENT

Petitioner contends, and supports by citation to the attached Appendices, the following:

1. Petitioner contends that the Ninth Cir. has taken to itself extraordinary power to determine whether it and its district courts violate Supreme Law of the Land, U.S. Const. art. VI, §2. The 9th Cir. rules that its district courts *do have "augmented inherent power" to prevent petitioner's filing of a RICO lawsuit* as defined by 18 USC § 1961 *now and forever* against these *named and unnamed* corporate defendants in the conduct of title insurance and escrow practice, not only in the Central Dist. of Cal. but in *every federal district court of the United States.* Although FNF/CTI sell insurance with escrow services nationwide, Judge Cooper subrogated every other federal district court to

Central Dist.'s internal operating rules prohibit every other jurisdiction from adjudication of FNF/CTI, App. D:14 a and App. E:17 a.

2. Petitioner contends the Ninth Cir. deliberately and knowingly subverts 18 USC §§1961, 1962 and Supreme Court requisites of pleading civil RICO to state law primary right concept: a single injury gives rise to a single cause of action and demurrer in state court is sufficient for final judgment on the merits, thus denying jurisdiction of federal question. App. H:25-26 a, affirming App. D:14 a and App. H 26 a.

Yet in *Wilcox v First Interstate Bank of Oregon, N.A.*, 815 F2d 522, 529 (9th Cir. 1987) the Ninth Cir. thoroughly parsed elements essential to a complaint. In *Allwaste, Inc. v Hecht*, 65 F3d 1523, 1526, 1527 (9th Cir. 1995) this Circuit reiterated RICO elements. And in *Sun Sav.&Loan Ass'n. v Dierdorff*, 825 F2 187 (9th Cir. 1987) and *Jarvis v Regan*, 833 F2d 149 (9th Cir. 1987) the Ninth Cir. adjudicated sufficiency of RICO complaints. As recently as 2000 the Ninth noted: "... we must explain how the criminal and civil provisions of the Racketeer Influenced and Corrupt Organizations Act interact..." and detailed every essential element requisite to a RICO complaint. *Fireman's Fund Ins. v Stites*, 2000 CDOS 6633.

3. Petitioner contends essentials of pleading civil RICO were established by the United States Supreme Court but the 9th carefully crafts California's elements of res judicata to dismantle each of these elements:

(a) continuity: open ended continuity, past conduct that by its nature projects into the future with the threat of repetition, or closed continuity, a closed period of repeated conduct within 18 USC §1962, (a),(b),(c)(d). In the RICO context what must be continuous is RICO's predicate acts or offenses and

the relationship these predicates must bear to one another are distinct requirements. *H.J. Inc. v Northwestern Bell Telephone Co.* 494 US 229, 239 (1989). Petitioner alleged false financial reports to induce a federal lender to fund an escrow followed by embezzlement of enough of those funds to close that escrow then further embezzlement of sellers' proceeds to cover that up, then ten years later by recordation of falsified Writs of Possession/Sale on an unrelated oceanfront condo in order to extort dismissal of this complaint. Thus, these crimes are interrelated, each a necessary step in a scheme to extort and defraud.

(b) pattern is defined as related acts of racketeering that amount to or pose the threat of continued criminal activity. 'Related' acts are those that have the same or similar purposes, results, participants, victims or methods of commission or are otherwise interrelated. *H.J. Inc. v Northwestern Bell Telephone Co.* 494 US 229, 239 (1989).

(c) Enterprise and person, §1962(c), requires two separate entities - a person and an enterprise. A RICO enterprise must be a continuing unit that has some type of organization and constitutes an entity separate and apart from the alleged pattern of racketeering, *United States v Turkette*, 452 US 576,583 (1981). The Central Dist.'s Order lumps all defendants, individuals and corporate entities as "named and unnamed defendants *and* their privies, past or future. App.E 17 a. The Ninth Cir. agreed that the ORDER was "narrowly tailored to remedy Powell's particular abuses", App. D:14a.

(d) Predicate acts are enumerated by §1961. Petitioner charged FNF/CTI and its CEO and attorneys of fraudulent financial reports to a federally insured financial institution §1014 (included in §1344) that falsely reported buyers' deposit of costs and down

payment; embezzlement of the lender's purchase monies in order to close their escrow, §656; fraud of a federally insured financial institution, §1344; mail fraud §1341; extortion by falsified recordation of Writ of Possession/Sale, a felony under Cal. Pen. Code §§ 115, 115.5, (among other crimes) and conspiracy all of which is an ongoing way of doing business. See App. K:36 a. The 9th Cir. is silent on the sufficiency of petitioner's complaint.

(e) injury to a § 1964(c) plaintiff must be caused by an overt act of racketeering, *Beck v Purpis*, 529 US 492 (2000). Justice Thomas noted that Congress enacted RICO as Title IX of the Organized Crime Control Act of 1970, Pub. L. 91-452, 84 Stat. 922, for the purpose of seeking the eradication of organized crime in the United States. Congress found that organized crime in the United States had become a highly sophisticated, diversified, and widespread activity that annually drained billions of dollars from America's economy by unlawful conduct and the illegal use of force, fraud, and corruption. The result was to weaken the stability of the Nation's economic system, harm innocent investors and competing organizations, interfere with free competition, seriously burden interstate and foreign commerce, threaten the domestic security and undermine the general welfare of the Nation and its citizens. Finding the existing sanctions and remedies available to the government to be unnecessarily limited in scope and impact, Congress resolved to address the problem of organized crime by strengthening the legal tools in the evidence-gathering process, by establishing new penal prohibitions, and by providing enhanced sanctions and new remedies to deal with the unlawful activities of those engaged in organized crime. RICO attempts to accomplish these goals by means of a civil cause of action for any person injured in his business or property by reason of a violation of section 1962.

This is the Congressional intent and the U.S. Supreme Court directive of 18 USC § 1961-1968 which the Ninth Cir. trivializes: The Cent. Dist. and an affirming Ninth Cir. ruled plaintiff's injury emanated from the *primary right to proper execution of the court's order regarding escrow* of the sale of the home. App. H:26 a and See App.K:36 a.

And this is the District Court's ORDER dismissing a civil RICO complaint:

> "Plaintiff Patricia H. Powell is **hereafter** to be declared a **vexatious litigant** as to each of the named Defendants in this action and as to any party in privity [sic]with said namedDefendants. Accordingly, Plaintiff Patricia H. Powell shall **now and forever** be required to seek and obtain an order of the court before **filing any further** actions **in any Federal Court** of the United States against **any of the named Defendants or any party in privity** [sic] with the named Defendants. Said order shall be made by the court only upon a satisfactory showing by Patricia H. Powell to the court which includes a certification the proposed action is brought in good faith, that the issues to be addressed in the proposed action have **not been raised** in a prior lawsuit, and that security in the amount of **$50,000 shall be posted before the action is...filed."** [Emphasis added on points essential to RICO) App. E:17 a.

4. Petitioner contends the 9th Cir. deliberately obfuscates principles of dual sovereignty and double jeopardy applicable to RICO by a generic: "We have considered the remainder of Powell's contentions and find they lack merit." App. D:15 a.

5. Petitioner contends that the Ninth Cir. knows or should know Central Dist. LR 27A contravenes FRCP 11(b), 28 USC §2071 by its very policy, since local rules govern local internal operating policy. The Cent. Dist. granted itself augmented inherent power to impose state law on federal question (criminal) jurisdiction, in federal district court, under federal statutory and judicial authority and federal rules of practice and procedure, including attorney discipline. Neither Judge Cooper nor a Ninth Cir. Panel find petitioner's complaint failed to plead civil RICO.

6. Petitioner contends that by filing federal question in a federal district court plaintiffs have chosen federal statutes, federal procedures, federal judiciary, and federal discipline, not vexatious litigant embarrassment of an attorney to circumvent RICO adjudication. App.H:23 a, App. A:2 a, App. D:14 a.

In *Quackenbush v Allstate Ins. Co.*, 517 US 706, 712, 713 (1996) this Court noted at 716:

> "We have often acknowledged that federal courts have a strict duty to exercise the jurisdiction that is conferred upon them by Congress." Citation. "Federal courts have a virtually unflagging obligation to exercise the jurisdiction given them."

Justice O'Conner further wrote that federal courts have no more right to decline exercise of jurisdiction which is given, than to usurp that which is not. *Id.* 716. Here the Cent. Dist. and the 9th Cir. seek to translate 'continuing pattern of predicate acts' to res judicata-single-injury-single-primary-right-state-law.

Howlett v Rose 496 US 356, 366, 371 (1990) precisely defines this issue. The Court noted (in a different context) that It is within the province of the

Supreme Court to inquire not only whether the right was denied in express terms, but whether it was denied in substance and effect, as *by putting forward nonfederal grounds of decision that were without any fair or substantial support.* Also, the Supremacy Clause forbids state courts to dissociate from federal law. Judge Cooper had to borrow state court demurrer for a final judgment on the merits, App. H:26 a.

7. Petitioner contends Judge Cooper gifted defendants with judgment on the pleadings by skewing FRCP Rules 7, 8, 12(c): Rule 7: There shall be a complaint and an answer. No other pleading shall be allowed. Rule 8(c): A party shall set forth affirmative defenses in pleading to a preceding pleading of ... res judicata. Rule 12(c) permits judgment on the pleadings after *pleadings are closed* to be made by motion except that matters outside the pleadings (matters judicially noticed) are presented, the motion *shall* be treated as one for summary judgment, and Rule 56 requires discovery, which defendants refuse.

In *Republic Ins. Co. v Culbertson*, 717 F. Supp. 415 D.C. Va (1989), the court wrote that motion for judgment on the pleadings only has utility when all material allegations of fact are admitted in pleadings and only questions of law remain. Judgment on the pleadings is proper only when the moving party clearly shows there are no material factual issues and the moving party is entitled to judgment as a matter of law.

The court accepts as true all facts pleaded by the non-moving party and grants all reasonable inferences from the pleadings in favor of the non-moving party. *Korlin v Chartwell Healthcare, Inc.* 128 F. Supp. 2d 609, 611 (8th Cir. E.D. Mo. 2001).

8. Petitioner contends Judge Copper set up her opportunity to enforce discretionary LR 27A.4 83-27A.4, California's vexatious litigant statute:

> App. H:27 a: "Defendants have failed to comply with the notice provisions of that Rule." [FRCP 11(b) requires notice 21 days before hearing.]

By refusing to calendar a new hearing date she was free to impose discretionary vexatious litigant in the face of authority that no local rule can frustrate federal law (18 USC 1964(c).

9. Petitioner contends the finding that defendants have pointed to no local rule that plaintiff has violated, App. H:28 a, terminated all discipline under LR 27A since the court dismissed FRCP 11(b). What then triggered LR 27A.4 and California's vexatious litigant statute with 9th Cir. approval ?

10. Petitioner contends this judge deceives Ninth Cir. review in her "findings" which must be based on a finding petitioner abused the Court's process [which she explicitly found petitioner did NOT] AND is likely to continue such abuses unless protective measures are taken. Judge Cooper's findings, App. H:30 a recite:

> "The Court finds Plaintiff to be a vexatious litigant. She has filed *meritless* claims against the same Defendants in four separate actions, all four of these actions were based on the same primary right as defined by California Law on res judicata, and all four were based on the same underlying factual allegations: the 1991-1992 court-ordered escrow. The Defendants have incurred over $25,000 in legal expenses defending these *meritless*

> claims. Previous monetary sanctions have been ineffective in deferring [sic]Plaintiff's *frivolous* filings, and the Plaintiff appears to be unable to pay these sanctions."

11. Petitioner contends the Nínth Cir. is duplicitous:

> In every Memorandum the Panel recites petitioner appeals dismissal of her Racketeer and Corrupt Organizations Act by insurance and title companies *involved* in the court-ordered escrow. And is silent on any aspect of civil RICO or fault in the RICO complaint. How is any judgment final if the complaint's allegations are never even mentioned ? App. D:13 a.

Under California law the question raised by demurrer to the complaint is simply whether it alleges sufficient facts to state a cause of action. A demurrer admits all material facts properly pleaded. *Gervase v Prudential Securities, Inc.*, 31 Cal. App.4th 1218, 1224. The Ninth Cir.'s entire res judicata stance relies on California demurrers.

12. Petitioner contends that only this Court can curb unbridled ineptitude, incompetence and a propensity to skew facts and law where the district court and its reviewing circuit court interpret Fed. Rule of Evid. that:

> "The Court may take judicial notice of *pleadings* of another [state] court when those pleadings contain adjudicative facts relevant to the issue at hand", "*Defendants have filed copies of pleadings from the litigation between the parties, and the Court hereby takes judicial notice of these filings.*" [Emphasis added] AppH:21 a.

13. Petitioner contends that only this highest Court of the judicial system can reassure and compensate consumers using FNF/CTI's nationwide insurance and escrow: the Insurance Comm'r. exacts fines for consumer litigation funds and these defendants settle lawsuits, but there is no evidence any consumer was paid restitution, App. K:37 a.

14. Petitioner contends that Due to the seriousness and ongoing crime, 18 USC §§1964(c), 1961, 1014, 1344, 1341, 656 and the explicit finding plaintiff abused no process or local rule, the Dist. Court has so far departed from accepted and usual course of judicial proceedings, which the 9th Cir. sanctions, that the Supreme Court has cause to intervene, Rule 10.

CONCLUSION

If the Ninth Circuit is not curbed from exploiting over-aggressive local rules of its district courts, it has carved out the power to govern every other federal district and circuit jurisdiction of the United States by device of augmented inherent powers to regulate internal proceedings, as here - supreme court powers.

7 May 2005

Respectively submitted,

Patricia H. Powell
Counsel of Record
Pro se

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT FILED FEB 14 2005

No. 03-16893

MEMORANDUM

Patricia H. Powell,

Plaintiff-Appellant,

v.

FIDELITY NATIONAL FINANCIAL, INC, et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of California
Maxine M. Chesney, District Judge, Presiding

Before FERNANDEZ, GRABER, and GOULD, Circuit Judges.

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3

** this Panel unanimously finds this case suitable for decision without oral argument See Fed. R. App. P. 34(a)(2).

Patricia H. Powell appeals pro se the district court's order dismissing without prejudice her complaint alleging RICO claims against Fidelity National Financial, Inc., Chicago Title, and various associated individuals. We have jurisdiction pursuant to 28 USC § 1291. We review for abuse of discretion the enforcement of a vexatious litigant order, *De Long v Hennessey*, 912 F.2d 1144, 1146 (9th Cir. 1990). We affirm.

The district court properly dismissed Powell's action because it was clearly prohibited by the terms of the vexatious litigant order upheld by the Ninth Circuit in *Powell v. Alleghany Corp.*, 0156599, 52 Fed. Appx. 18, WL 316291 (9th Cir 2002).

Powell's argument that the district court's enforcement of another district court's vexatious litigant order violates the Supremacy Clause is without merit. See U.S. Const. art. VI, §2

Powell's remaining contentions are unpersuasive.

Powell's motion to expedite is denied as moot.

AFFIRMED.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JUDGMENT IN A CIVIL CASE
Filed September 9 2003

PATRICIA H. POWELL

V.

FIDELITY NATIONAL FINANCIAL, INC., et al.

Case Number C-03-3313 MMC

XX Decision by the Court: This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

1. Powell's motion to strike defendants' motion to dismiss is DENIED.

2. Powell's request to file an "Objection" to defendants' reply brief is DENIED.

Plaintiff's Objection and defendants' Reply to Plaintiff's Request to File Objection, are both STRICKEN from the record.

3. Defendants' motion to dismiss is GRANTED, and Powell's complaint is DISMISSED, without prejudice to filing a new action if she first obtains court permission and posts a $50,000 bond, in full

compliance with the July 31, 2001 judgment *in Powell v. Alleghany Corporation*, CV-01-2546 FMC (C.D. Cal. 2001).

4. Defendants' request for an order declaring Powell a vexatious litigant is DENIED as moot.

Date SEP X9 2003

Signed by Deputy Clerk
Tracy Lucero

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

Filed SEP X9 2003 No. C-03-3313 MMC

PATRICIA H. POWELL,

Plaintiff,

v.

FIDELITY NATIONAL FINANCIAL, INC., et al.,

Defendants

ORDER DISMISSING COMPLAINT WITHOUT PREJUDICE; VACATING HEARING

[1]The caption of the complaint identifies the individual defendants as "Wm.P. Foley II, And individually As Chr. Of The Board And CEO, FIDELITY NAT'L. FIN. CORP., CHICAGO TITLE INS CO., FNIS, FNTI CO.; MARK E. SCHIFFMAN, Individually And As SR.VICE PRES. CHICAGO TITLE & TRUST, FNF, CHIEF LITIGATION COUNSEL; W. DEAN CLOUD Individually And ASSOCIATE COUNSEL FID. NAT'L. FIN.; MARK J. SARNI COUNSEL FID. NAT'L FIN. CORP.; MICHAEL E. DULLEA, Individually And As VICE PRESIDENT AND COUNSEL CHICAGO TITLE INS. CO.; CTI'S CONTROLLED ESCROW CO.; and DOES 1-10[.]"

In this action between plaintiff Patricia H. Powell ("Powell") against Fidelity National Financial, Inc. (Fidelity National"), Chicago Title Ins. ("Chicago Title"), and various individuals associated therewith,[1] defendants now move to dismiss the action or, in the alternative to change venue, pursuant to Rules 12(b)(6) and 12 (b)(3) of the Federal Rules of Civil Procedure, respectively and to have Powell declared a vexatious litigant. The Court finds the matter suitable for decision without oral argument, pursuant to Civil Local Rule 7-1(b), and VACATES the September 12, 2003 hearing.

BACKGROUND

Exhibit 1 to Powell's complaint is an order in the case of *Powell v. Alleghany Corporation*, CV-01- 2546 FMC (C.D. Cal 2 0 01) . That order sets forth a lengthy history of litigation by Powell over the court-ordered sale of her home to Frank and Sherrie Boone in 1991:

> In 1988, Frank and Sherrie Boone leased a home from Plaintiff Powell and her sister, Barbara Hendricks. The lease agreement contained an option to purchase the home. When the Boones attempted to exercise the their option to purchase the home, Plaintiff refused to honor the option and denied the existence of such an option. In 1989, the Boones filed an action in the San Diego County Superior Court to enforce the option agreement and to compel the sale of the home. A trial on the matter was held in 1991, and the jury returned a verdict in favor of the Boones, specifically finding that Plaintiff had committed fraud in denying the existence of an option to purchase the home. The Court ordered the sale of the home to the Boones.

On October 3, 1991, the Court ordered escrow on the home to be opened with Chicago Title, which is a Defendants in this action. When Plaintiff and Hendricks refused to sign documents necessary to complete the transfer of ownership of the home, the court appointed the clerk of the court as an elisor with the power to sign escrow papers and to grant deeds on behalf of Plaintiff and Hendricks. On January 9, 1992, escrow was closed and the home was transferred to the Boones.

On June 1, 1992, Plaintiff appealed the court's order. On September 10, 1993, the Court of Appeal issued an opinion affirming the verdict, the judgment and the court's award of sanctions against Powell.

Over one year later, Plaintiff filed a complaint against Defendants and others in the Los Angeles Superior Court, basing her claims on their actions in carrying out the court-ordered escrow. On September 12, 1995 the Superior Court sustained Defendants' demurrer without leave to amend as to the Chicago Title Defendants. Plaintiff was granted leave to amend her claims as to other entities named in the action. When Plaintiff filed her amended complaint, however, she added a claim under the federal Racketeer Influenced And Corrupt Organizations Act ("RICO"). (footnote omitted) The Superior Court concluded that no facts supported this cause of action and sustained Chicago Title's second demurrer without leave to amend.

Approximately one year thereafter, Plaintiff, as counsel, filed the same lawsuit, in the same

> court, against the same defendants, in her sister's name. (citation omitted) The Superior Court sustained Defendants' demurrer without leave to amend. Plaintiff was sanctioned for her conduct.
>
> Undeterred, Plaintiff filed an action against the Defendants in the District Court for the Central District of California in June 1997. This action against involved allegations concerning Defendants' involvement in the 1991-92 court-ordered escrow. (citation omitted) In dismissing the claims filed in that action, the court concluded that Plaintiff's claims were barred by the doctrine of *res judicata*. The court held that the general demurrer issued by the Superior Court constituted a judgment on the merits, that the same parties were involved in the state actions, and that the actions involved the same cause of action as the state court actions.

(Id. at 2-4) The court went on to find that Powell's then current action was a fourth lawsuit based n the same set of facts, and that it likewise was barred by the doctrine of res judicata. (Id. at 2.) The court than declared Powell to be a vexatious litigant (Id. at 7-9.)

In a judgment filed July 31, 2001, which is attached as Exhibit 2 to Powell's current complaint, the court ordered, adjudged, and decreed that:

> Plaintiff Patricia H. Powell shall now and forever be required to seek and obtain an order of the court before filing any further actions in any Federal Court of the United States against any of the named Defendants or any party in privity with the named Defendants. Said order shall be made

by the court only upon a satisfactory showing by Patricia H. Powell to the court which includes a certification that the proposed is brought in good faith, that the issues to be addressed in the proposed action have not been raised in prior lawsuit, and that security inthe amount of $50,000 shall be posted before the action is filed.

Compl., Ex. 2 at 2.)

Powell has now filed a fifth complaint, this time in the District Court Northern District of California.

DISCUSSION

A. Rule 12(f) Motion

In response to defendants' motion to dismiss, Powell has filed a motion to strike defendants' motion, pursuant to rule 12(f) of the Federal Rules of Civil Procedure. The Court finds Powell's motion frivolous, as it consists primarily of argument as to why defendants' motion to dismiss should be denied. It does not address the grounds upon which a motion to strike may be granted, specifically, that a "pleading" contains "redundant, immaterial, impertinent, or scandalous matter," see Rule 12(f), and, in any event, a motion to dismiss is not a "pleading." See *Crum v Circus Circus Enterprises*, 231 F.3d 1129, 1130 n.3 (9th Cir. 2000); see also Fed. R. Civ. P. 7 (distinguishing between pleading and motions).

Accordingly, the Court DENIES Powell's motion, brought under Rule 12(f), to strike defendants' motion to dismiss.

B. Request to File Supplemental Briefing

Powell has submitted a Request to File Objection and Objection" to defendants' reply brief. Civil Local Rule 7-3(d) provides that "once a reply is filed, no additional memorandum, papers. or letters may be filed without prior court approval." Civ. L. R. 7-3(d). The Court finds Powell's "Objection" to be unhelpful and unnecessary. DENIES Powell's request that it be filed, and orders that it be STRICKEN from the record. The Court also orders STRICKEN defendants' "Reply to Plaintiff's Request to File Objection," which was filed without prior permission of the Court.

C. Defendants' Motion to Dismiss

Defendants move to dismiss the instant complaint on the ground that the current action, like the others before it, is barred by the doctrine of res judicata or, alternatively, that venue is lacking in the Northern District. The Court, however, will not decide these issues, as Powell was required to obtain court permission and to post a $50,000 bond before filing any complaint, and failed to do so.

Pursuant to the order of the court in the Central District, Powell is not permitted to file an action in any federal court against any of the named defendants in the Alleghany action, or any party in privity with them without first (1) obtaining prior permission from the court; (2) certifying that the proposed action is brought in good faith and that the issues to be addressed in the proposed action have not been raised in a prior lawsuit; and (3) posting a $50,000 bond. Compl., Ex.2 at 2.) The judgment in the Alleghany action identifies Chicago Title as a defendant. (Id. at 1.) Chicago Title is also a defendant in the current

action. Powell's current complaint alleges that Chicago Title has been integrated into defendant Fidelity National, "which assumed its liabilities as well as its assets." Compl. ¶ 7.) Thus, by Powell's own allegations, Fidelity National is in privity with Chicago Title. The individual defendants are all alleged to be officers, employees, or counsel of Chicago Title and/or Fidelity National. (id. ¶ 9.), and thus they also are in privity with Chicago Title and Fidelity National.

As a consequence, Powell was not permitted to file the current action unless she first obtained court permission to do so. Indeed, Powell acknowledges in her complaint that she filed the action in the Northern District because "the Central Dist. twice refused jurisdiction of RICO under pretense it re-litigated *Boone v. Powell/Henricks'* specific performance suit, thus barred by res judicata," and if she filed it in the Central District of California, Judge Cooper would be re-assigned this action and would never consent[.]" Compl. ¶¶ 6.8.) Although the Court appreciates Powell's candor, her displeasure with the orders of the Central District does not authorize her to disregard them.

Accordingly, Powell's complaint must be dismissed, without prejudice to filing a new action if she first obtains court permission and files a $50,000 bond, in compliance with the Alleghany judgment.

Defendants also seek to have Powell declared a vexatious litigant in this district, but as noted, Powell has already been declared a vexatious litigant by the Central District of California in an order that requires Powell to obtain court permission before filing an action against the defendants in any federal court. The Ninth Circuit affirmed that decision in an unpublished

opinion, holding that "[t]he district court did not abuse its discretion in designating Powell as a vexatious litigant because Powell received adequate notice to oppose the motion, the district court recounted and made substantive findings as to the frivolous nature of Powell's filings, and the order was narrowly tailored to remedy Powell's particular abuses.: *Powell v. Allegheny Corp.*, 52 Fed. Appx. 18, 20 (9th Cir. 2002). As Powell is already barred, nationwide, from filing her action without prior court permission, defendants would gain nothing by obtaining a vexatious litigant order against Powell from this Court.

CONCLUSION

For the reasons set forth above, and for good cause shown, (1) Powell's motion to strike defendants' motion to dismiss is DENIED. (2) Powell's request to file and "Objection" to defendant's reply brief is DENIED. Plaintiff's Objection, and defendants' Reply to Plaintiff's Request To File Objection, are both STRICKEN from the record. (3) Defendants' motion to dismiss is GRANTED, and Powell's complaint is DISMISSED, without prejudice to filing a new action if she first obtains permission and posts a $50,000 bond, in full compliance with the July 31, 2001 judgment in Powell v Alleghany Corporation, CV-01-2546 FMC (C.D. Cal. 2001). (4) Defendants' request for an order declaring Powell a vexatious litigant is DENIED as moot.

The clerk shall close the file.

IT IS SO ORDERED.

Dated SEP x9 2003 Signed by Maxine M. Chesney
U.S. District Judge

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT FILED NOV 27 2002

No. 01-56599 D.C.No. CV-01-02456FMC

MEMORANDUM

Patricia H. Powell,

Plaintiff-Appellant,

v.

ALLEGHANY CORP. et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Central District of California
Florence Marie Cooper, District Judge, Presiding

Before:REINHARDT, RYMER and SILVERMAN,Circuit Judges

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3

** This Panel unanimously finds this case suitable for decision without oral argument See Fed. R. App. P. 34(a)(2). Accordingly, Appellant's motion for oral argument is denied.

Patricia H. Powell appeals the district court's order dismissing her action alleging violations of the Racketeer Influenced and Corrupt Organizations Act RICO) by insurance and title companies involved in the court-ordered escrow and sale of Powell's property. We have jurisdiction pursuant to 28 USC §1291. We review de novo a district court's dismissal based on res judicata, *W. Radio Servs. Co. v. Glickman*, 123 F.3d 1189, 1192 (9th Cir. 1997), and we affirm.

Powell's claims have been the subject of two prior state court actions[1], as well as a federal complaint which was the subject of an appeal before this Court.[2] The district court correctly determined that Powell's complaint was barred by principles of res judicata: the claim relates to the same primary right asserted in the prior actions; the prior judgments were final and on the merits; and the plaintiff was party or in privity with a party in the prior actions. See *Monterey Plaza Hotel Ltd. P'ship v. Local 483 of the Hotel Employees and Rest. Employees Union, AFL-CIO*, 215 F.3d 923, 928 (9th Cir. 2000).

Powell's argument that granting preclusive effect to a state court decision violates the Supremacy Clause is without merit. See 28 USC 1738; see also *Takahashi v. Bd. of Trustees of Livingston*, 783 F2d 848, 850 (9th Cir.), *cert. denied*, 476 US 1182 (1986).

The district court did not abuse its discretion in designating Powell as a vexatious litigant because Powell received adequate notice to oppose the motion, the district court recounted and made substantive findings as to the frivolous nature of Powell's filings, and the order was narrowly tailored to remedy Powell's particular abuses. *See O'Loughlin v Doe*, 920 F2d 614,

617 (9th Cir.1990). We have considered the remainder of Powell's contentions and find they lack merit.

AFFIRMED.

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1. The two prior California state court actions were *Powell v Alleghany Corp.*, Case No. GC013802, and *Henricks v Alleghany Corp.*, Case No. GC016003

2. *Powell v Alleghany Corp,; et al*, No.97-56621, 188 F3d 514 (9th Cir. 1999) (unpublished memorandum disposition).

APPENDIX E - JUDGMENT OF UNITED STATES DISTRICT COURT DATED 2 AUGUST 2001

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

No. CV 01-02546FMC(CTx)

Patricia H. Powell,

Plaintiff,

v.

ALLEGHANY CORP. Through John J. Burns Jr., Chr/ CEO; CHICAGO TITLE CORP., 1998 Spinoff, Through John Rau, P/CEO; CHICAGO TITLE & TRUST CO., Subsidiary, Through John Rau, Pres/CEO; CHICAGO TITLE INS CO., Subsidiary, Through John Rau, Pres/ CEO; CHICAGO TITLE CO., Subsidiary, Through Wm Halvorsen, Jr., Pres,; MICHAEL E. DULLEA, Individually and As Ass't. Vice Pres. And Associate Regional Counsel Of CHICAGO TITLE INS. CO. and Vice Pres. of CHICAGO TITLE CO.; JANICE L. ANDERSON, Individually And As Escrow Officer of CHICAGO TITLE INS.CO./CHICAGO TITLE CO. and CONTROLLED ESCROW COMPANY, And DOES 1-50,

Defendants.

JUDGMENT

Upon review of Defendants' motion for judgment on the pleadings and motion for monetary sanctions and request for Plaintiff Patricia H. Powell to be declared a vexatious litigant, and upon review of the court orders issued as a result of said motion, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment in this matter shall be in favor of all Defendants, named or unnamed, and against Plaintiff Patricia H. Powell. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants; shall not recover any monetary sanctions against Plaintiff Patricia H. Powell but that Plaintiff Patricia H. Powell is hereafter to be declared a vexatious litigant as to each of the named Defendants in this action and as to any party in privity with said named Defendants.

Accordingly, Plaintiff Patricia H. Powell shall now and forever be required to seek and obtain an order of the court before filing any further actions in any Federal Court of the United States against any of the named Defendants or any party in privity with the named Defendants. Said order shall be made by the court only upon a satisfactory showing by Patricia H. Powell to the court which includes a certification that the proposed action is brought in good faith, that the issues to be addressed in the proposed action have not been raised in a prior lawsuit, and that security in the amount of $50,000.00 shall be posted before the action is to be filed.

Dated: 7/3/01

FLORENCE-MARIE COOPER.
Judge, UNITED STATES
DISTRICT COURT

APPENDIX F - ORDER OF THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

No. CV-01-02546FMC

Filed July 25, 2001

IT IS HEREBY ORDERED:

The document is NOT to be filed, but instead REJECTED, and is ORDERED returned to *counsel. Counsel shall immediately notify, in writing, all parties previously served with the attached documents that said documents have not been filed with the court.

No new causes of action against these Defs w/o posting a bond.

Dated: 7/24/01

Florence-Marie Cooper
U.S. DISTRICT JUDGE

* THE TERM "COUNSEL" AS USED HEREIN ALSO INCLUDES ANY PRO SE PARTY. See Local Rule 2.9.3

APPENDIX G - CIVIL MINUTES - GENERAL
ENTERED 12 JUNE 2001

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

No. CV 01-2546FMC(CTx) June 11, 2001
Title: Patricia H. Powell v Alleghany Corp., et al.

PRESENT:
THE HONORABLE FLORENCE-MARIE COOPER, JUDGE

Alicia Mason	Not present
Courtroom clerk	Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFF	ATTORNEYS PRESENT FOR DEFENDANTS
Patricia Powell	Mark J. Sarni

Proceedings: (In chambers)

SCHEDULING CONFERENCE

The matter came on for scheduling conference. After discussion with counsel for both parties, the Court ordered a stay of discovery until after the Court has had an opportunity to rule on the defendants' Motion for Judgment on the Pleadings, presently set for hearing on June 25, 2001. If the motion is denied, the following schedule is established:

Discovery cut off:	10/03/01
Motion cut off	12/10/01
Pre-Trial Conference	1/14/02 at 9:00 am
Jury Trial	2/20/02 at 9:00 am

APPENDIX H: UNITED STATES DISTRICT COURT ENTERED 22 JUNE 2001

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

No. CV 01-02546FMC(CTx)

Patricia Powell,

Plaintiff

v.

Alleghany Corporation, et al.,

Defendants

ORDER GRANTING DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS; ORDER DENYING DEFENDANTS' MOTION FOR SANCTIONS; ORDER GRANTING DEFENDANTS' REQUEST TO DECLARE PLAINTIFF A VEXATIOUS LITIGANT; ORDER REMOVING HEARING FROM COURT'S CALENDAR

This matter is before the Court on Defendants' Motion for Judgment on the Pleadings pursuant to Fed.R.Civ.P. 12(c), Defendants' Motion for Sanctions pursuant to Fed.R.Civ.P. 11 and Local Rules 27 and to Declare Plaintiff a Vexatious Litigant pursuant to Local Rule 27A. The Court deems this matter appropriate for decision without oral argument. See Fed.R.Civ.P. 78; Local Rule 7.11. Accordingly, the

hearing set for June 25, 2001. is removed from the Court's calendar. For the reasons stated herein, the Court hereby GRANTS Defendants' Motion for Judgment on the Pleadings, DENIES Defendants' Motion for Sanctions, and GRANTS defendants' request to declare Plaintiff a vexatious litigant.

I. Background

Defendants argue that the present action is the Plaintiff's fourth action regarding the same set of facts, and, as such, Plaintiff's claims are barred by the doctrine of *res judicata*. The record bears out that the subject matter of the present action concerns past litigation that is, at its inception, over a decade old. Defendants have filed copies of pleadings from the litigation between the parties, and the Court hereby takes judicial notice of these filings.[1] To the extent the Court can discern Plaintiff's arguments in opposition to the Motion to Dismiss, Plaintiff contends that dismissal is improper because the state court actions were not addressed on the merits, that the state Court had no authority to address her federal claim under The Racketeer Influenced and Corrupt Organizations Act ("RICO"), that she had no opportunity to be heard regarding her RICO claim, and that dismissal is inappropriate under Fed. R. Civ. P. 12(c).

In 1988 Frank and Sherrie Boone leased a home from Plaintiff Powell and her sisterBarbara Hendricks .

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1. The Court may take judicial notice of pleadings of another court when those pleadings contain adjudicative facts relevant to the issue at hand. See Fed.R.Evid. 201; *Papai v Harbor Tug&Barge Co.*, 67 F3d 203, 207 n.5 (9th Cir. 1995; *reversed on other grounds*, 520 US 548, 117 S.CT. 1535.

The lease agreement contained an option to purchase the home. When the Boones attempted to exercise their option to purchase the home, Plaintiff refused to honor the option and denied the existence of such an option. In 1989, the Boones filed an action in the San Diego County Superior Court to enforce the option agreement and to compel the sale of the home. A trial on the matter was held in 1991, and the jury returned a verdict in favor of the Boones, specifically finding that Plaintiff had committed fraud in denying the existence of an option to purchase the home. The Court ordered the sale of the home to the Boones.

On October 3, the Court ordered escrow on the home to be opened with Chicago Title, which is a Defendant in this action. When Plaintiff and Hendricks[sic] refused to sign documents necessary to complete the transfer of ownership of the home, the court appointed the clerk of court as an elisor with the power to sign escrow papers and to grant deeds on behalf of Plaintiff and Hendricks. On January 9, 1992, escrow was closed and the home was transferred to the Boones.

On June 1, 1992, Plaintiff appealed the court's order. On September 10, 1993, the court of appeal issued an opinion affirming the verdict, the judgment, and the court's award of sanctions against Plaintiff. Over one year later, Plaintiff filed a complaint against Defendants and others in the Los Angeles Superior Court, basing her claims on their actions in carrying out the court-ordered escrow. On September 12, 1995, the Superior Court sustained Defendants' demurrer without leave to amend as to the Chicago Title Defendants. Plaintiff was granted leave to amend her claims as to other entities named in the action. When Plaintiff filed her amended complaint, however, she

added a claim under the federal Racketeer Influenced and Corrupt Organizations Act ("RICO").[2]The Superior Court concluded that no facts supported this cause of action and sustained Chicago Title's second demurrer without leave to amend.

Approximately one year thereafter, Plaintiff, as counsel, filed the same lawsuit, in the same court, against the same defendants, in her sister's name. Compare Request for Judicial Notice, Exh. C, with Request for Judicial Notice, Exh. D. The Superior Court sustained Defendants' demurrer without leave to amend. Plaintiff was sanctioned for her conduct.

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2. Contrary to the arguments raised by Plaintiff in her Opposition to the Motion to Dismiss, state courts have the authority to adjudicate claims under RICO such as the one she asserted in the earlier state court actions. See *Tafflin v Levitt*, 493 US 455, 458, 110 SCt 792 (1990) (holding that state courts have concurrent jurisdiction over federal civil RICO claims). Nor does the court find compelling Plaintiff's claim that her due process rights were violated because the court did not permit oral argument as to her RICO claim. Importantly, the court sustained the first demurrer without leave to amend; therefore, Plaintiff was not entitled to amend the complaint to assert her RICO claim. Moreover, there is no due process right to oral argument. *Federal Communications Commission vs. WJR*, 337 US 265, 69 SCt 1097 (1949)

Undeterred, Plaintiff filed an action against the Defendants in the District Court for the Central District of California in June 1997. This action again involved allegations concerning Defendants' involvement in the 1991-1992 court-ordered escrow. See Request for Judicial Notice, Exh E. Judgment against the Plaintiff was entered on September 25, 1997. See *Powell v. Alleghany Corp.*, CV97-4312GHK (AJWx). Memorandum and Order (Sept. 25. 1997), attached to Defendants' Request for Judicial Notice. In dismissing the claims filed in that action, the court concluded that Plaintiff's claims were barred by the doctrine of res judicata. The court held that the general demurrer issued by the superior court constituted a judgment on the merits, that the same parties were involved in the state court actions,[3] and that the actions involved the same cause of action as the state court actions.[4]

II Res Judicata

The Court may properly consider the issue of res judicata where, as here, it is presented in a motion for judgment on the pleadings pursuant to Fed. R. of P. 12(c). See *Owens v Kaiser Foundation Health Plan, Inc.*, 244 F3d 708, 711, 715 (9th Cir. 2001) (affirming district court's granting of judgment on the pleadings in favor of defendants based on the doctrine of res

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3. The one party that was not involved in the earlier actions was found to be in privity with the defendants in the earlier actions.

4. Specifically, the court held that the same "primary right" was implicated in the earlier actions: the right to proper execution of the court's order regarding the escrow of the sale of the home.

judicata). Federal courts must give a state court judgment the same preclusive effect as would be given that judgment under the law of the state in which the judgment was rendered. *See Migra v Warren City School Dist. Bd. of Ed.*, 465 US 75, 104 SCt 892 (1984). Under California law, res judicata, or claim preclusion, bars relitigation of a claim when a prior action adjudicated 1) the same claim, 2) resulted in a final judgment on the merits, and 3) the party against whom the claim is asserted was a party to or was in privity with a party to the prior action. *Cal State Auto Ins. Ass'n v Superior Court*, 50 Cal.3d 658, 268 Cal. Rptr. 284 (1990); *Clemmer v Hartford Ins. Co.* 22 Cal.3d 865, 151 Cal. Rptr. 285 (1978); *Victa v Merle Norman Cosmetics, Inc.*, 19 Cal.App. 4th 454, 24 Cal. Rptr. 2d 117 (1994).

A. The Same Claim

California follows the "primary right" theory of what constitutes a cause of action. Under this theory, a claim, or "cause of action" is based on the harm suffered, not the particular legal theory asserted by the litigant. *Peiser v Mettler*, 50 Cal.2d 594 (1958). The primary rights theory provides that a "cause of action" is comprised of a "primary right" of the plaintiff, a corresponding "primary duty" of the defendant, and a wrongful act by the defendant constituting a breach of that duty. *Crowley v Katleman*, 8 Cal.4th 666, 34 Cal. Rptr. 2d 386 (1994). The violation of a single primary right gives rise to but a single cause of action. *Id.* As far as its content is concerned, the primary right is simply the plaintiff's right to be free from the particular injury suffered. *Id*

"Even where there are multiple legal theories upon which recovery might be predicated, one injury gives rise to only one claim for relief." *Id.* at 668-69. The primary right theory applies when a previous action has resulted in a final judgment on the merits and a defendant in a second action asserts that the second action is precluded under the principles of *res judicata. Id.*

Upon review of the complaint filed in the present action, the court concurs with Judge King's observation in the previous federal action that the same "primary right" was implicated in all the earlier actions: the right to proper execution of the court's order regarding the escrow of the sale of the home. Therefore, because Plaintiff's claims in the present action address the same primary right that was at issue in the three previous actions, the "same claim" element of *res judicata* is met in this action.

B. Final Judgment on the Merits

The Court sustained Defendants' demurrers in the state court actions. "In California, a judgment entered after the sustaining of a general demurrer is a judgment on the merits, and, to the extent that it adjudicates that the facts alleged do not establish a cause of action, it will bar a second action on the same facts." *Palomar Mobilehome Park Ass'n v City of San Marcos*, 989 F2d 362 (9th Cir. 1993) (citing *Crowley v Modern Faucet Mfg. Co.*, 44 Cal 2d 321, 34 [sic] (1955)). Accordingly, Plaintiff's claims in the state court actions resulted in a final judgment on merits.

C. Same Parties or Those in Privity

This court observes, as did Judge King, that the parties to the present action are the same parties or those in privity with the parties in the state court actions. The present case names John Rau as a Defendant; Rau was not a defendant in the state court action. However, as Judge King noted, John Rau, as a newly appointed president of Chicago Title Company, is in privity with the defendants in the state court actions. Plaintiff also adds a new entity to the present action "Chicago Title Corporation, 1998 Spinoff, through John Rau, President and CEO." This entity, as described by Plaintiff, is in privity with the Chicago Title Defendants in the state court actions. Therefore, Plaintiff's claims are asserted against the same parties or those in privity with the same parties against whom the claims were asserted in the state court actions.

Because all the elements of *res judicata* have been met, Plaintiff is barred from relitigating her claims by virtue of the state court judgment. Accordingly, the Court hereby **GRANTS** defendants' Motion for Judgment on the Pleadings.

III. Motion for Sanctions

Defendants move for sanctions pursuant to Fed.R. Civ.P. 11 and Local Rules 27 and 27A. Sanctions are not proper under Rule 11 because Defendants have failed to comply with the notice provisions of that Rule. An often ignored provision of Rule 11 states that a motion for sanctions pursuant to Rule 11 must be served on the offending party twenty-one days before

it is filed with the Court. Fed. R. Civ. P. 11(c)(1)(A). this provision is meant to give the offending party the opportunity to voluntarily withdraw the paper, claim, defense, contention. allegation. or denial that is alleged to have violated Rule 11. *Id.* Because Defendants have not complied with the requirements for bringing a motion for sanctions pursuant to Rule 11 cannot be made.

Defendants also move for sanctions pursuant to Local Rules 27 and 27A. Local Rule 27A concerns vexatious litigant and is addressed separately, below. Local Rule 27 authorizes the Court to impose monetary sanctions if the Court finds a violation of any of the Local Rules. Defendants have pointed to no Local Rule that Plaintiff has violated. Therefore, the Court denies Defendants' Motion for Sanctions pursuant to Local Rule 27.

IV. Vexatious Litigants

Defendants have moved to have Plaintiff declared a vexatious litigant. Local Rule 27A addresses vexatious litigants:

> 27A.1 POLICY - It is the policy of the Court to discourage vexatious litigation and to provide persons who are subjected to vexatious litigation with security against the costs of defending against such litigation and appropriate orders to control such litigation....
>
> 27A.2 ORDERS FOR SECURITY AND CONTROL On its own motion or on motion of a party, after opportunity to be heard, the Court may, at any time, order a party to give security in such amount as the Court determines to be appropriate to secure the payment of any costs,

sanctions or other amounts which may be awarded against a vexatious litigant, and may make such other orders as appropriate to control the conduct of a vexatious litigant. Such such orders may include, without limitation, a directive to the Clerk not to accept further filings from the litigant without payment of normal filing fees and/or without written authorization from a judge of the Court or a Magistrate Judge, issued upon such showing of the evidence supporting the claim as the judge may require.

27A.3 FINDINGS - Any order issued under Rule 27A.2 shall be based on a finding that the litigant to whom the order is issued has abused the Court's process and is likely to continue such abuse, unless protective measures are taken.

27A.4 REFERENCE TO STATE STATUTE - Although nothing in this rule shall be construed to require that such a procedure be followed, the Court may, at its discretion, proceed by reference to the Vexatious Litigants statute of the State of California, Cal. Code Civ. Proc. §391-391.7.

Defendants suggest that the Court should make reference to California statutory law regarding vexatious litigants. Specifically, defendants suggest application of the definition of "vexatious litigant" found in Cal. Code Civ. Proc. § 391(b)(2), which provides:

(b) "Vexatious litigant" means a person who does any of the following:

> (2) after a litigation has been finally determined against the person, repeatedly relitigates or attempts to relitigate, in propria persona, either (i) the validity of the determination against the same defendant or defendants as to whom the litigation was finally determined or (ii) the cause of action, claim, controversy, or any of the issues of fact or law, determined or concluded by the final determination against the same defendant or defendants as to whom litigation was finally determined.

Cal.Code Civ. Proc. § 391(b);see also *First Western Development Corp. v Superior Court (Andrisani)*, 212 Cal. App.3d 860, 261 Cal. Rptr. 116 (1989) (holding that an unsuccessful defendant in unlawful detainer proceeding who filed five suits against opposing party, its officer, and attorneys, three of which attempted to relitigate issues previously raised in unlawful detainer action, was "vexatious litigant" within meaning of § 391(b)(2) and therefore, defendant could be required to post appropriate bond in pending and future suits).

The Court finds Plaintiff to be a vexatious litigant. She has filed meritless claims against the same Defendants in four separate actions, all four of these actions were based on the same primary right as defined by California Law on res judicata, and all four were based on the same underlying factual allegations: the 1991-1992 court-ordered escrow. The Defendants have incurred over $25,000 in legal expenses defending these meritless claims. Previous monetary sanctions have been ineffective in deferring Plaintiff's frivolous filings, and Plaintiff appears to be unable to pay these sanctions.

Accordingly, Plaintiff is hereby ordered to seek leave of the Court before filings complaint against any of the Defendants named in this action (or any party in privity with the Defendants) based on any of all of the facts alleged in the complaint, including any claims based on the 1991-1992 court-ordered escrow. Plaintiff must certify that the claims she wishes to present are brought in good faith and that they have not been raised in any previous actions. Plaintiff must also post security in the amount of $50,000 before filing such a complaint.

The clerk of the court is directed to reject Plaintiff's filings absent compliance with the requirements of this order.

V. Conclusion

The Court hereby grants Defendants' Motion for Judgment on the Pleadings. Defendants shall file, within ten days of the entry of this Order, a proposed judgment consistent with this order. Defendants' Motion for Sanctions is denied. Plaintiff has been declared a vexatious litigant based on the record as outlined in this order. she must comply with the requirements outlined in the previous section before she will be permitted to file any future claims against these Defendants.

IT IS SO ORDERED.
DATED this 21st day of June, 2001.

Signed: Florence-Marie Cooper
Judge, UNITED STATES
DISTRICT COURT

APPENDIX I: CIVIL MINUTES-GENERAL

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

Case No. CV 01-2546 FMC(CTx) Date: July 31, 2001

Title: PATRICIA H. POWELL V ALLEGHANY CORP. etal

PRESENT:

THE HONORABLE FLORENCE-MARIE COOPER, JUDGE

Alicia Mason Courtroom Clerk	Not present Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS	ATTORNEYS PRESENT FOR DEFENDANTS
Not present	Not present

PROCEEDINGS: ORDER DENYING PLAINTIFF'S MOTION TO AMEND JUDGMENT (In chambers)

This matter is before the Court on Plaintiff's Opposition to Defendants' Proposed Judgment and Motion to Amend Judgment or Alter the Judgment. The Court deems this matter appropriate for decision without oral argument. See Fed. R. Civ. P. 78: Local Rule 7.11. Accordingly, the hearing set for August 6. 2001, is removed from the Court's calendar.

In substance, Plaintiff's Opposition and Motion merely set forth arguments that were raised in opposition to Defendant's [sic] Motion for Judgment on the

Pleadings. Accordingly, the Court hereby DENIES Plaintiff's Motion to Amendment [sic] Judgment or Alter the judgment.

Plaintiff also requests that the Court reconsider its Order declaring her a vexatious litigant. For the reasons stated in the Court's June 21, 2001, Order, Plaintiff has properly been declared a vexatious litigant. Accordingly, the Court DENIES Plaintiff's request.

Initials of clerk:

ENTERED ON ICMS Aug - 2001

APPENDIX J: CONSTITUTIONAL, STATUTORY AUTHORITY RELIED UPON

CONSTITUTION OF THE UNITED STATES

ART. VI §2: This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the Judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

28 USC § 2071. Rule Making Power Generally

(a) The Supreme Court and all courts established by Act of Congress may from time to time prescribe rules for the conduct of their business. Such rules shall be consistent with Acts of Congress and rules of practice and procedure prescribed under section 2072 of this title.

28 USC § 1651. WRITS

(a) The supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

FED. RULES CIV. PROC. Rule 12(c)

Motion for Judgment on the Pleadings> After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented

to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56 and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

FED. RULES OF CIV. PROC. Rule 7:

There shall be a complaint and an answer, a reply to a counterclaim denominated as such....No other pleading shall be allowed, except that the court may order a reply to an answer or a third-party answer.

FED. RULES OF CIV. PROC. Rule 83

(a) Local Rules

Each district court, acting by a majority of its district judges, may ... make and amend rules governing its practice. A local rule shall be consistent with – but duplicative of – Acts of Congress and rules adopted under 28 USC §§ 2072 and 2075....

18 USC § 1964 (c)

Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefore in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee....

APPENDIX K: NEWSTORY: DAILY NEW [VAN NUYS] WEDNESDAY, OCT. 8, 2002, BUSINESS

Big title firms reach settlement

A $50 million settlement was reached in a consumer protection lawsuit against a half dozen major title companies and their affiliates, state Attorney General Bill Lockyer announced Tuesday.

Agreeing to the settlement are Fidelity National Title Insurance Co., Chicago Title Insurance, First American Title Insurance, Commonwealth Land Title Insurance, Lawyers Title Insurance and Stewart Title of California Inc. and their various parent, subsidiary and affiliated companies.

The companies were accused of deceiving California consumers with hidden fees and costs while providing routine residential escrow and title services, and failing to pass on the their customers benefits that were provided by financial institutions based on agreements to deposit consumer escrow funds in their banks.

The companies did not admit to any liability or wrongdoing under the settlement. "Buying a home is a dream come true for many California families, but negotiating and completing the complex financial transactions can become a nightmare of details. These settlements will ensure that potential homeowners won't be taken advantage of by the professionals they rely on to fulfill their dreams." Lockyer said.

Under the stipulated judgments, signed by Sacramento Superior Court Judge Loren E. McMaster, the companies will pay more than $40 million in refunds to eligible customers who bought, sold or refinanced residential property between May 19, 1995,

and Tuesday, according to the Attorney General's Office.

Notices regarding distribution of the refunds will be published in newspapers statewide, and it is estimated that the refund distribution will begin in six months, officials said.

Along with the refunds, the companies also will pay a total of $4.45 million in civil penalties and $2.35 million to the consumer Protection Trust Fund to assist in future prosecutions of other consumer protection matters.

The companies also agreed to pay an additional amount for fees and costs associated with the settlement.

The judgment also includes a variety of injunctive provisions barring the companies from continuing to engage in the practices that led to the lawsuit, according to Lockyer's office.

NEWSTORY: DAILY NEWS [VAN NUYS] FRIDAY, OCTOBER 15, 1999

Title firm given stiff penalty

First American to pay $2.5 million
By Gregory J. Wilcox (staff writer)

Glendale - In the largest penalty of its kind to date, California's biggest title insurance company will pay $2.5 million to settle charges it made illegal kickbacks to real estate agents, State Insurance Commissioner Chuck Quackenbush said Thursday.

Santa Ana-based First American Title Co. will pay $1.25 million in fines and penalties and $1.25 million to a consumer awareness program. The most egregious violations occurred in the company's Los Angeles office, which was not allowed to take any new orders on Monday as part of the penalty. It still was able to service existing orders and customers.

.....

This is the eighth and by far the largest penalty levied upon a title company since the state began an aggressive policing of the industry in 1961 Earlier this year Chicago Title Co. was fined $235.000.

"It's because of the egregious inducements," insurance department spokeswoman Dana Spurrier said of the harsh penalty.

.....

"We're sending a very strong message to the title insurance industry."

.....

LOCAL RULES, CENTRAL DIST.

RULE 27. (83-27) SANCTION - VIOLATION OF RULE

The violation of or failure to conform to any of these Local Rules, may subject the offending party or counsel to:

(a) monetary sanction, if the Court finds that the conduct was willful, grossly negligent, or reckless;

(b) the imposition of costs and attorneys' fees to opposing counsel, if the Court finds that the conduct rises to the level of bad faith and/or a willful disobedience of a court order; and/or

(c) for any of the conduct specified in (a) and (b) above, such other sanctions as the Court may deem appropriate under the circumstances.

RULE 27A (83-27A) VEXATIOUS LITIGANTS

27A.1 (83-27A.1) POLICY

It is the policy of the Court to discourage vexatious litigation and to provide persons who are subjected to vexatious litigation with security against the costs of defending against such litigation and appropriate orders to control such litigation. It is the intent of this rule to augment the inherent power of the Court to control vexatious litigation *and nothing in this rule shall be construed to limit the Court's inherent power in that regard. (Emphasis added)*

27A.2 (83-27A.2)

On its own motion or on motion of a party, after opportunity to be heard, the Court may, at any time, order a party to give security in such amount as the *Court determines to be appropriate* to secure the

payment of any costs, *sanctions or other amounts which may be awarded* against a vexatious litigant, and *may make such other orders as are appropriate* to control the conduct of a vexatious litigant. Such orders may include, *without limitation*, a directive to the Clerk *not to accept further filings* from the litigant without payment of normal filing fees and/or without written authorization from a judge of the Court or a Magistrate Judge issued upon such showing of the evidence supporting the claim as the judge may require.

27A.3 (83-27A.3 FINDINGS

Any order issued under Rule 27A.2 shall be based on a finding that the litigant to whom the order is issued has abused the Court's process and is likely to continue such abuse, unless protective measures are taken.

27A.4 (83-27A.4 REFERENCE TO STATE STATUTE

Although nothing in this rule shall be construed to require that such a procedure be followed, the Court *may, at its discretion, proceed by reference to the Vexatious Litigants statute of the State of California*, Cal. Code Civ. Proc. §§ 391-391.7. [Emphasis Added]

No. 04-1630

In The

Supreme Court of the United States

PATRICIA H. POWELL,

Petitioner,

v.

FIDELITY NATIONAL FINANCIAL, INC./Chicago Title Ins. Co. Through Wm P. FOLEY II, And Individually As Chr. Of The Board And CEO, FIDELITY NAT'L. FIN. CORP.,CHICAGO TITLE INS. CO., FNIS.FNTI CO.; MARK E. SCHIFFMAN, Individually And As SR. VICE PRES., CHICAGO TITLE&TRUST, FNF, And FNF CHIEF LITIGATION COUNSEL; W.DEAN CLOUD, Individually And ASSOCIATE COUNSEL FID. NAT'L. FIN.; MARK J. SARNI, COUNSEL FID. NAT'L. FIN. CORP; MICHAEL E. DULLEA, Individually And As VICE PRES. AND COUNSEL CHICAGO TITLE INS. CO.; CTI'S CONTROLLED ESCROW CO., DOES 1-10,

Defendants.

On Petition For Writ Of Certiorari To The Ninth Circuit

PETITION FOR REHEARING, RULE 44

Patricia H. Powell 133892
Counsel of Record
111A Oliva Court
Novato, California 94947
415.893.0010

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PETITION FOR REHEARING, RULE 44

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GROUNDS FOR REHEARING PETITION

1. *Intervening Circumstances Which Controlled Denial of Petition for Certiorari:*

At the time this petition reached this Court, the Court was in a state of flux, short two justices, both shaped and formulated pleading requirements of RICO in accord with Congressional intent to rid organizations and corporations of corrupt practices.

Petition to this Court of the Cent. Dist. Order, App. E, F, G, H, barring petitioner now and forever access to all federal district courts as against these named defendants did not demonstrate petitioner had yet lost Constitutional rights of due process. Considerable loss of money and of access to the courts results from the Northern Dist.'s subsequent refusal of jurisdiction, App.C, ostensibly for the $50,000, but the Cent. Dist. Order prohibits every district court jurisdiction to prosecute FNF/CTI, its officers and attorneys for RICO crimes now and forever.

2. *Substantial grounds for reconsideration:*

FNF/CTI's attorneys and officers committed new predicate acts as soon as petitioner was prohibited access to federal courts, as described below. Emboldened by the 9th Cir.'s recasting of ongoing federal crime as "res judicata" sets precedence and a new era of abandonment of Congressional intent of RICO. Petitioner had statutory standing to sue for relief under 18 USC §1964, which is now abolished under inherent powers of the Cent. Dist.'s policy and "res judicata". This drives a stake in the heart of RICO and encourages industry-wide corrupted corporations.

CONTENTIONS AND ARGUMENTS

This Court now has a full complement of Justices, including Justice O'Connor who authored *Quackenbush v Allstate Ins. Co.* 517 US 706, 712, 713 (1996) which reminds federal courts of a duty to exercise jurisdiction conferred upon them. The Court is aware of string cites in which the USSCt has fashioned guidelines: a pattern of continuity, of more than one predicate act over a period of time, of predicate acts, 18 USC 1961. Of petitioner's three complaints filed in federal courts, not one has been adjudicated, found defective, or even mentioned.

The Central Dist. Court enacted policy under guise of local rule relying on inherent power to circumvent FRCP 11(b), LR 27A.1.2, 3, and 28 USC §2071, App. H:28a, in order to create a new vexatious litigant bar "now and forever" to access all federal courts, in any law suit as against named, protected defendants, thus controlling jurisdiction of every other federal court in the civil and criminal justice system. $50,000 does not buy jurisdiction of FNF/CTI. App. E,F,G,H. The 9th affirmed these inherent powers as "narrowly tailored" after regurgitating "res judicata" under state law on this federal question, in federal court. App.D.

On 28 July 2001 (before the Cent. Dist. Court Order issued), FNF/CTI Attorney Cloud commenced a new scheme of theft: he issued an Execution (money judgment) Possession of Real Property, App. L, in violation of Cal Code Civ. Proc. §699.060: money judgments to acquire petitioner's $400,000 oceanfront rental for a money judgment, is enforced by lien, not sale of real property. Under Div. 9 Enforcement of Non-Money Judgments, §712.010 requires issuance of writ after entry of *Judgment* For Possession or Sale of Real Property. §§712.020, 030 and .04 describe the writ of execution requires the judgment ordering sale

or possession. CCP §715.010 requires a judgment for writ of execution of *possession* of real property, App.L, and its reverse requires time, date and court.of the *Judgment* rendered. Defendants understandably left this blank, App. L. CCP §§ 716.010 requires a *judgment of sale of real property* to be enforced by issuance of a writ of sale and certified copy delivered to the levying officer. Petitioner's oceanfront condo has never been the subject of any lawsuit: no such judgment of sale or possession exists, thus defendants unlawfully recorded, and caused the sheriff to record, falsified documents in violation of C.P.C. §§115 and 115.5 with prison terms, thus predicate acts, 18 USC §1961(1). The Writ itself is falsified: (1) Cloud recited a debt of $71,000, (2) he made no accounting of levies, nor reduced the amount of debt and interest by those levies, CCP §695.210(c), and (3) steadfastly refused to disburse or credit the remaining $17,000 from the 1992 escrow despite the marshal's order to release.

On 3 Apr. 2002 Attorney Cloud commenced a new pattern of fraud and theft: without benefit of the courts he "amended" the existing Abstract of [Money] Judgment, App. J, and recorded an "AMENDED" Abstract of Judgment, App. K, increasing debt from $54,000 to $71,000. On 4 Mar 2002, Cloud made the next step in his scheme to defraud: he filed a Notice in the Los Angeles Superior Court signed by John Clarke, Clerk , App. N, noticing petitioner of sale of her $400,000 oceanfront condo in violation of every law of enforcement of judgments.

On 9/21/01 the sheriff was caused to record execution for a new outstanding debt of $99,788.18. by levy on that condo and joined as a judgment debtor a co-owner to get the whole, still based on the 11/26/97 sanction. On 12/28/01 CTI/attorney Cloud caused the Sheriff's Dept. to notice the lender of sale of its collateral. By 3/4/02 FNF/Attorney Cloud had

escalated *possession* to *sale* and persuaded the superior court to issue order of sale. Petitioner's hasty refi of that property exchanged a $54,000 mortgage for a $150,000 and payments of $550 for three years for a 30-year mortgage of nearly $1000/month, a loss into the distant future. App.O.

Plaintiff describes these schemes in detail to demonstrate the power of in-house real property activities and corporate fraud amounting to RICO.

The Cal. Ins. Comm'r., the Cal Att'y. Gen., the Cal. Comptroller and the FTC have filed actions against these defendants, and the Third Circuit entertained a RICO action against FNF for fraud and illegal fees, but petitioned is prohibited from recouping over a million dollars in losses for these same crimes.

CONCLUSION

This combination of a real estate industry riddled with newly devised racketeering activity and federal district courts gifted with inherent power to pick and choose jurisdiction is a stake in the heart of civil RICO and due process and should be a concern of Congress as well as this Court

If the Court denies this rehearing petition, then a lone federal district of one state has inherent powers, exploited by the 9th Cir., to determine its own jurisdiction over the entire federal justice system, the laws of the land and power to nullify federal statutes and rules.

21 October 2005

Respectfully submitted,

Patricia H Powell

Patricia H. Powell

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT FILED FEB 14 2005

No. 03-16893

MEMORANDUM

Patricia H. Powell,

Plaintiff-Appellant,

v.

FIDELITY NATIONAL FINANCIAL, INC, et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of California
Maxine M. Chesney, District Judge, Presiding

Before FERNANDEZ, GRABER, and GOULD, Circuit Judges.

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3

** this Panel unanimously finds this case suitable for decision without oral argument See Fed. R. App. P. 34(a)(2).

Patricia H. Powell appeals pro se the district court's order dismissing without prejudice her complaint alleging RICO claims against Fidelity National Financial, Inc., Chicago Title, and various associated individuals. We have jurisdiction pursuant to 28 USC § 1291. We review for abuse of discretion the enforcement of a vexatious litigant order, *De Long v Hennessey*, 912 F.2d 1144, 1146 (9th Cir. 1990). We affirm.

The district court properly dismissed Powell's action because it was clearly prohibited by the terms of the vexatious litigant order upheld by the Ninth Circuit in *Powell v. Alleghany Corp.*, 0156599, 52 Fed. Appx. 18, WL 316291 (9th Cir 2002).

Powell's argument that the district court's enforcement of another district court's vexatious litigant order violates the Supremacy Clause is without merit. See U.S. Const. art. VI, §2

Powell's remaining contentions are unpersuasive.

Powell's motion to expedite is denied as moot.

AFFIRMED.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JUDGMENT IN A CIVIL CASE
Filed September 9 2003

PATRICIA H. POWELL

V.

FIDELITY NATIONAL FINANCIAL, INC., et al.

Case Number C-03-3313 MMC

XX Decision by the Court: This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

1. Powell's motion to strike defendants' motion to dismiss is DENIED.

2. Powell's request to file an "Objection" to defendants' reply brief is DENIED.

Plaintiff's Objection and defendants' Reply to Plaintiff's Request to File Objection, are both STRICKEN from the record.

3. Defendants' motion to dismiss is GRANTED, and Powell's complaint is DISMISSED, without prejudice to filing a new action if she first obtains court permission and posts a $50,000 bond, in full

compliance with the July 31, 2001 judgment *in Powell v. Alleghany Corporation*, CV-01-2546 FMC (C.D. Cal. 2001).

4. Defendants' request for an order declaring Powell a vexatious litigant is DENIED as moot.

Date SEP X9 2003 Signed by Deputy Clerk
Tracy Lucero

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

Filed SEP X9 2003 No. C-03-3313 MMC

PATRICIA H. POWELL,

Plaintiff,

v.

FIDELITY NATIONAL FINANCIAL, INC., et al.,

Defendants

ORDER DISMISSING COMPLAINT WITHOUT PREJUDICE; VACATING HEARING

[1]The caption of the complaint identifies the individual defendants as "Wm.P. Foley II, And individually As Chr. Of The Board And CEO, FIDELITY NAT'L. FIN. CORP., CHICAGO TITLE INS CO., FNIS, FNTI CO.; MARK E. SCHIFFMAN, Individually And As SR.VICE PRES. CHICAGO TITLE & TRUST, FNF, CHIEF LITIGATION COUNSEL; W. DEAN CLOUD Individually And ASSOCIATE COUNSEL FID. NAT'L. FIN.; MARK J. SARNI COUNSEL FID. NAT'L FIN. CORP.; MICHAEL E. DULLEA, Individually And As VICE PRESIDENT AND COUNSEL CHICAGO TITLE INS. CO.; CTI'S CONTROLLED ESCROW CO.; and DOES 1-10[.]"

In this action between plaintiff Patricia H. Powell ("Powell") against Fidelity National Financial, Inc. (Fidelity National"), Chicago Title Ins. ("Chicago Title"), and various individuals associated therewith,[1] defendants now move to dismiss the action or, in the alternative to change venue, pursuant to Rules 12(b)(6) and 12 (b)(3) of the Federal Rules of Civil Procedure, respectively and to have Powell declared a vexatious litigant. The Court finds the matter suitable for decision without oral argument, pursuant to Civil Local Rule 7-1(b), and VACATES the September 12, 2003 hearing.

BACKGROUND

Exhibit 1 to Powell's complaint is an order in the case of *Powell v. Alleghany Corporation*, CV-01- 2546 FMC (C.D. Cal 2 0 01) . That order sets forth a lengthy history of litigation by Powell over the court-ordered sale of her home to Frank and Sherrie Boone in 1991:

> In 1988, Frank and Sherrie Boone leased a home from Plaintiff Powell and her sister, Barbara Hendricks. The lease agreement contained an option to purchase the home. When the Boones attempted to exercise the their option to purchase the home, Plaintiff refused to honor the option and denied the existence of such an option. In 1989, the Boones filed an action in the San Diego County Superior Court to enforce the option agreement and to compel the sale of the home. A trial on the matter was held in 1991, and the jury returned a verdict in favor of the Boones, specifically finding that Plaintiff had committed fraud in denying the existence of an option to purchase the home. The Court ordered the sale of the home to the Boones.

On October 3, 1991, the Court ordered escrow on the home to be opened with Chicago Title, which is a Defendants in this action. When Plaintiff and Hendricks refused to sign documents necessary to complete the transfer of ownership of the home, the court appointed the clerk of the court as an elisor with the power to sign escrow papers and to grant deeds on behalf of Plaintiff and Hendricks. On January 9, 1992, escrow was closed and the home was transferred to the Boones.

On June 1, 1992, Plaintiff appealed the court's order. On September 10, 1993, the Court of Appeal issued an opinion affirming the verdict, the judgment and the court's award of sanctions against Powell.

Over one year later, Plaintiff filed a complaint against Defendants and others in the Los Angeles Superior Court, basing her claims on their actions in carrying out the court-ordered escrow. On September 12, 1995 the Superior Court sustained Defendants' demurrer without leave to amend as to the Chicago Title Defendants. Plaintiff was granted leave to amend her claims as to other entities named in the action. When Plaintiff filed her amended complaint, however, she added a claim under the federal Racketeer Influenced And Corrupt Organizations Act ("RICO"). (footnote omitted) The Superior Court concluded that no facts supported this cause of action and sustained Chicago Title's second demurrer without leave to amend.

Approximately one year thereafter, Plaintiff, as counsel, filed the same lawsuit, in the same

> court, against the same defendants, in her sister's name. (citation omitted) The Superior Court sustained Defendants' demurrer without leave to amend. Plaintiff was sanctioned for her conduct.
>
> Undeterred, Plaintiff filed an action against the Defendants in the District Court for the Central District of California in June 1997. This action against involved allegations concerning Defendants' involvement in the 1991-92 court-ordered escrow. (citation omitted) In dismissing the claims filed in that action, the court concluded that Plaintiff's claims were barred by the doctrine of *res judicata*. The court held that the general demurrer issued by the Superior Court constituted a judgment on the merits, that the same parties were involved in the state actions, and that the actions involved the same cause of action as the state court actions.

(Id. at 2-4) The court went on to find that Powell's then current action was a fourth lawsuit based n the same set of facts, and that it likewise was barred by the doctrine of res judicata. (Id. at 2.) The court than declared Powell to be a vexatious litigant (Id. at 7-9.)

In a judgment filed July 31, 2001, which is attached as Exhibit 2 to Powell's current complaint, the court ordered, adjudged, and decreed that:

> Plaintiff Patricia H. Powell shall now and forever be required to seek and obtain an order of the court before filing any further actions in any Federal Court of the United States against any of the named Defendants or any party in privity with the named Defendants. Said order shall be made

by the court only upon a satisfactory showing by Patricia H. Powell to the court which includes a certification that the proposed is brought in good faith, that the issues to be addressed in the proposed action have not been raised in prior lawsuit, and that security inthe amount of $50,000 shall be posted before the action is filed.

Compl., Ex. 2 at 2.)

Powell has now filed a fifth complaint, this time in the District Court Northern District of California.

DISCUSSION

A. Rule 12(f) Motion

In response to defendants' motion to dismiss, Powell has filed a motion to strike defendants' motion, pursuant to rule 12(f) of the Federal Rules of Civil Procedure. The Court finds Powell's motion frivolous, as it consists primarily of argument as to why defendants' motion to dismiss should be denied. It does not address the grounds upon which a motion to strike may be granted, specifically, that a "pleading" contains "redundant, immaterial, impertinent, or scandalous matter," see Rule 12(f), and, in any event, a motion to dismiss is not a "pleading." See *Crum v Circus Circus Enterprises*, 231 F.3d 1129, 1130 n.3 (9th Cir. 2000); see also Fed. R. Civ. P. 7 (distinguishing between pleading and motions).

Accordingly, the Court DENIES Powell's motion, brought under Rule 12(f), to strike defendants' motion to dismiss.

B. Request to File Supplemental Briefing

Powell has submitted a Request to File Objection and Objection" to defendants' reply brief. Civil Local Rule 7-3(d) provides that "once a reply is filed, no additional memorandum, papers. or letters may be filed without prior court approval." Civ. L. R. 7-3(d). The Court finds Powell's "Objection" to be unhelpful and unnecessary. DENIES Powell's request that it be filed, and orders that it be STRICKEN from the record. The Court also orders STRICKEN defendants' "Reply to Plaintiff's Request to File Objection," which was filed without prior permission of the Court.

C. Defendants' Motion to Dismiss

Defendants move to dismiss the instant complaint on the ground that the current action, like the others before it, is barred by the doctrine of res judicata or, alternatively, that venue is lacking in the Northern District. The Court, however, will not decide these issues, as Powell was required to obtain court permission and to post a $50,000 bond before filing any complaint, and failed to do so.

Pursuant to the order of the court in the Central District, Powell is not permitted to file an action in any federal court against any of the named defendants in the Alleghany action, or any party in privity with them without first (1) obtaining prior permission from the court; (2) certifying that the proposed action is brought in good faith and that the issues to be addressed in the proposed action have not been raised in a prior lawsuit; and (3) posting a $50,000 bond. Compl., Ex.2 at 2.) The judgment in the Alleghany action identifies Chicago Title as a defendant. (Id. at 1.) Chicago Title is also a defendant in the current

action. Powell's current complaint alleges that Chicago Title has been integrated into defendant Fidelity National, "which assumed its liabilities as well as its assets." Compl. ¶ 7.) Thus, by Powell's own allegations, Fidelity National is in privity with Chicago Title. The individual defendants are all alleged to be officers, employees, or counsel of Chicago Title and/or Fidelity National. (id. ¶ 9.), and thus they also are in privity with Chicago Title and Fidelity National.

As a consequence, Powell was not permitted to file the current action unless she first obtained court permission to do so. Indeed, Powell acknowledges in her complaint that she filed the action in the Northern District because "the Central Dist. twice refused jurisdiction of RICO under pretense it re-litigated *Boone v. Powell/Henricks'* specific performance suit, thus barred by res judicata," and if she filed it in the Central District of California, Judge Cooper would be re-assigned this action and would never consent[.]" Compl. ¶¶ 6.8.) Although the Court appreciates Powell's candor, her displeasure with the orders of the Central District does not authorize her to disregard them.

Accordingly, Powell's complaint must be dismissed, without prejudice to filing a new action if she first obtains court permission and files a $50,000 bond, in compliance with the Alleghany judgment.

Defendants also seek to have Powell declared a vexatious litigant in this district, but as noted, Powell has already been declared a vexatious litigant by the Central District of California in an order that requires Powell to obtain court permission before filing an action against the defendants in any federal court. The Ninth Circuit affirmed that decision in an unpublished

opinion, holding that "[t]he district court did not abuse its discretion in designating Powell as a vexatious litigant because Powell received adequate notice to oppose the motion, the district court recounted and made substantive findings as to the frivolous nature of Powell's filings, and the order was narrowly tailored to remedy Powell's particular abuses.: *Powell v. Allegheny Corp.*, 52 Fed. Appx. 18, 20 (9th Cir. 2002). As Powell is already barred, nationwide, from filing her action without prior court permission, defendants would gain nothing by obtaining a vexatious litigant order against Powell from this Court.

CONCLUSION

For the reasons set forth above, and for good cause shown, (1) Powell's motion to strike defendants' motion to dismiss is DENIED. (2) Powell's request to file and "Objection" to defendant's reply brief is DENIED. Plaintiff's Objection, and defendants' Reply to Plaintiff's Request To File Objection, are both STRICKEN from the record. (3) Defendants' motion to dismiss is GRANTED, and Powell's complaint is DISMISSED, without prejudice to filing a new action if she first obtains permission and posts a $50,000 bond, in full compliance with the July 31, 2001 judgment in Powell v Alleghany Corporation, CV-01-2546 FMC (C.D. Cal. 2001). (4) Defendants' request for an order declaring Powell a vexatious litigant is DENIED as moot.

The clerk shall close the file.

IT IS SO ORDERED.

Dated SEP x9 2003 Signed by Maxine M. Chesney
U.S. District Judge

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT FILED NOV 27 2002

No. 01-56599 D.C.No. CV-01-02456FMC

MEMORANDUM

Patricia H. Powell,

Plaintiff-Appellant,

v.

ALLEGHANY CORP. et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Central District of California
Florence Marie Cooper, District Judge, Presiding

Before:REINHARDT, RYMER and SILVERMAN,Circuit Judges

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3

** This Panel unanimously finds this case suitable for decision without oral argument See Fed. R. App. P. 34(a)(2). Accordingly, Appellant's motion for oral argument is denied.

Patricia H. Powell appeals the district court's order dismissing her action alleging violations of the Racketeer Influenced and Corrupt Organizations Act RICO) by insurance and title companies involved in the court-ordered escrow and sale of Powell's property. We have jurisdiction pursuant to 28 USC §1291. We review de novo a district court's dismissal based on res judicata, *W. Radio Servs. Co. v. Glickman*, 123 F.3d 1189, 1192 (9th Cir. 1997), and we affirm.

Powell's claims have been the subject of two prior state court actions[1], as well as a federal complaint which was the subject of an appeal before this Court.[2] The district court correctly determined that Powell's complaint was barred by principles of res judicata: the claim relates to the same primary right asserted in the prior actions; the prior judgments were final and on the merits; and the plaintiff was party or in privity with a party in the prior actions. See *Monterey Plaza Hotel Ltd. P'ship v. Local 483 of the Hotel Employees and Rest. Employees Union, AFL-CIO*, 215 F.3d 923, 928 (9th Cir. 2000).

Powell's argument that granting preclusive effect to a state court decision violates the Supremacy Clause is without merit. See 28 USC 1738; see also *Takahashi v. Bd. of Trustees of Livingston*, 783 F2d 848, 850 (9th Cir.), *cert. denied*, 476 US 1182 (1986).

The district court did not abuse its discretion in designating Powell as a vexatious litigant because Powell received adequate notice to oppose the motion, the district court recounted and made substantive findings as to the frivolous nature of Powell's filings, and the order was narrowly tailored to remedy Powell's particular abuses. *See O'Loughlin v Doe*, 920 F2d 614,

617 (9th Cir.1990). We have considered the remainder of Powell's contentions and find they lack merit.

AFFIRMED.

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1. The two prior California state court actions were *Powell v Alleghany Corp.*, Case No. GC013802, and *Henricks v Alleghany Corp.*, Case No. GC016003

2. *Powell v Alleghany Corp,; et al*, No.97-56621, 188 F3d 514 (9th Cir. 1999) (unpublished memorandum disposition).

APPENDIX E - JUDGMENT OF UNITED STATES DISTRICT COURT DATED 2 AUGUST 2001

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

No. CV 01-02546FMC(CTx)

Patricia H. Powell,

Plaintiff,

v.

ALLEGHANY CORP. Through John J. Burns Jr., Chr/ CEO; CHICAGO TITLE CORP., 1998 Spinoff, Through John Rau, P/CEO; CHICAGO TITLE & TRUST CO., Subsidiary, Through John Rau, Pres/CEO; CHICAGO TITLE INS CO., Subsidiary, Through John Rau, Pres/ CEO; CHICAGO TITLE CO., Subsidiary, Through Wm Halvorsen, Jr., Pres,; MICHAEL E. DULLEA, Individually and As Ass't. Vice Pres. And Associate Regional Counsel Of CHICAGO TITLE INS. CO. and Vice Pres. of CHICAGO TITLE CO.; JANICE L. ANDERSON, Individually And As Escrow Officer of CHICAGO TITLE INS.CO./CHICAGO TITLE CO. and CONTROLLED ESCROW COMPANY, And DOES 1-50,

Defendants.

JUDGMENT

Upon review of Defendants' motion for judgment on the pleadings and motion for monetary sanctions and request for Plaintiff Patricia H. Powell to be declared a vexatious litigant, and upon review of the court orders issued as a result of said motion, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment in this matter shall be in favor of all Defendants, named or unnamed, and against Plaintiff Patricia H. Powell. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants; shall not recover any monetary sanctions against Plaintiff Patricia H. Powell but that Plaintiff Patricia H. Powell is hereafter to be declared a vexatious litigant as to each of the named Defendants in this action and as to any party in privity with said named Defendants.

Accordingly, Plaintiff Patricia H. Powell shall now and forever be required to seek and obtain an order of the court before filing any further actions in any Federal Court of the United States against any of the named Defendants or any party in privity with the named Defendants. Said order shall be made by the court only upon a satisfactory showing by Patricia H. Powell to the court which includes a certification that the proposed action is brought in good faith, that the issues to be addressed in the proposed action have not been raised in a prior lawsuit, and that security in the amount of $50,000.00 shall be posted before the action is to be filed.

Dated: 7/3/01

FLORENCE-MARIE COOPER.
Judge, UNITED STATES
DISTRICT COURT

APPENDIX F - ORDER OF THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

No. CV-01-02546FMC

Filed July 25, 2001

IT IS HEREBY ORDERED:

The document is NOT to be filed, but instead REJECTED, and is ORDERED returned to *counsel. Counsel shall immediately notify, in writing, all parties previously served with the attached documents that said documents have not been filed with the court.

No new causes of action against these Defs w/o posting a bond.

Dated: 7/24/01

Florence-Marie Cooper
U.S. DISTRICT JUDGE

* THE TERM "COUNSEL" AS USED HEREIN ALSO INCLUDES ANY PRO SE PARTY. See Local Rule 2.9.3

APPENDIX G - CIVIL MINUTES - GENERAL
ENTERED 12 JUNE 2001

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

No. CV 01-2546FMC(CTx) June 11, 2001
Title: Patricia H. Powell v Alleghany Corp., et al.

PRESENT:
THE HONORABLE FLORENCE-MARIE COOPER, JUDGE

Alicia Mason	Not present
Courtroom clerk	Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFF	ATTORNEYS PRESENT FOR DEFENDANTS
Patricia Powell	Mark J. Sarni

Proceedings: (In chambers)

SCHEDULING CONFERENCE

The matter came on for scheduling conference. After discussion with counsel for both parties, the Court ordered a stay of discovery until after the Court has had an opportunity to rule on the defendants' Motion for Judgment on the Pleadings, presently set for hearing on June 25, 2001. If the motion is denied, the following schedule is established:

Discovery cut off:	10/03/01
Motion cut off	12/10/01
Pre-Trial Conference	1/14/02 at 9:00 am
Jury Trial	2/20/02 at 9:00 am

APPENDIX H: UNITED STATES DISTRICT COURT ENTERED 22 JUNE 2001

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

No. CV 01-02546FMC(CTx)

Patricia Powell,

Plaintiff

v.

Alleghany Corporation, et al.,

Defendants

ORDER GRANTING DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS; ORDER DENYING DEFENDANTS' MOTION FOR SANCTIONS; ORDER GRANTING DEFENDANTS' REQUEST TO DECLARE PLAINTIFF A VEXATIOUS LITIGANT; ORDER REMOVING HEARING FROM COURT'S CALENDAR

This matter is before the Court on Defendants' Motion for Judgment on the Pleadings pursuant to Fed.R.Civ.P. 12(c), Defendants' Motion for Sanctions pursuant to Fed.R.Civ.P. 11 and Local Rules 27 and to Declare Plaintiff a Vexatious Litigant pursuant to Local Rule 27A. The Court deems this matter appropriate for decision without oral argument. See Fed.R.Civ.P. 78; Local Rule 7.11. Accordingly, the

hearing set for June 25, 2001, is removed from the Court's calendar. For the reasons stated herein, the Court hereby GRANTS Defendants' Motion for Judgment on the Pleadings, DENIES Defendants' Motion for Sanctions, and GRANTS defendants' request to declare Plaintiff a vexatious litigant.

I. Background

Defendants argue that the present action is the Plaintiff's fourth action regarding the same set of facts, and, as such, Plaintiff's claims are barred by the doctrine of *res judicata*. The record bears out that the subject matter of the present action concerns past litigation that is, at its inception, over a decade old. Defendants have filed copies of pleadings from the litigation between the parties, and the Court hereby takes judicial notice of these filings.[1] To the extent the Court can discern Plaintiff's arguments in opposition to the Motion to Dismiss, Plaintiff contends that dismissal is improper because the state court actions were not addressed on the merits, that the state Court had no authority to address her federal claim under The Racketeer Influenced and Corrupt Organizations Act ("RICO"), that she had no opportunity to be heard regarding her RICO claim, and that dismissal is inappropriate under Fed. R. Civ. P. 12(c).

In 1988 Frank and Sherrie Boone leased a home from Plaintiff Powell and her sisterBarbara Hendricks .

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1. The Court may take judicial notice of pleadings of another court when those pleadings contain adjudicative facts relevant to the issue at hand. See Fed.R.Evid. 201; *Papai v Harbor Tug&Barge Co.*, 67 F3d 203, 207 n.5 (9th Cir. 1995; *reversed on other grounds*, 520 US 548, 117 S.CT. 1535.

The lease agreement contained an option to purchase the home. When the Boones attempted to exercise their option to purchase the home, Plaintiff refused to honor the option and denied the existence of such an option. In 1989, the Boones filed an action in the San Diego County Superior Court to enforce the option agreement and to compel the sale of the home. A trial on the matter was held in 1991, and the jury returned a verdict in favor of the Boones, specifically finding that Plaintiff had committed fraud in denying the existence of an option to purchase the home. The Court ordered the sale of the home to the Boones.

On October 3, the Court ordered escrow on the home to be opened with Chicago Title, which is a Defendant in this action. When Plaintiff and Hendricks[sic] refused to sign documents necessary to complete the transfer of ownership of the home, the court appointed the clerk of court as an elisor with the power to sign escrow papers and to grant deeds on behalf of Plaintiff and Hendricks. On January 9, 1992, escrow was closed and the home was transferred to the Boones.

On June 1, 1992, Plaintiff appealed the court's order. On September 10, 1993, the court of appeal issued an opinion affirming the verdict, the judgment, and the court's award of sanctions against Plaintiff. Over one year later, Plaintiff filed a complaint against Defendants and others in the Los Angeles Superior Court, basing her claims on their actions in carrying out the court-ordered escrow. On September 12, 1995, the Superior Court sustained Defendants' demurrer without leave to amend as to the Chicago Title Defendants. Plaintiff was granted leave to amend her claims as to other entities named in the action. When Plaintiff filed her amended complaint, however, she

added a claim under the federal Racketeer Influenced and Corrupt Organizations Act ("RICO").[2] The Superior Court concluded that no facts supported this cause of action and sustained Chicago Title's second demurrer without leave to amend.

Approximately one year thereafter, Plaintiff, as counsel, filed the same lawsuit, in the same court, against the same defendants, in her sister's name. Compare Request for Judicial Notice, Exh. C, with Request for Judicial Notice, Exh. D. The Superior Court sustained Defendants' demurrer without leave to amend. Plaintiff was sanctioned for her conduct.

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2. Contrary to the arguments raised by Plaintiff in her Opposition to the Motion to Dismiss, state courts have the authority to adjudicate claims under RICO such as the one she asserted in the earlier state court actions. See *Tafflin v Levitt*, 493 US 455, 458, 110 SCt 792 (1990) (holding that state courts have concurrent jurisdiction over federal civil RICO claims). Nor does the court find compelling Plaintiff's claim that her due process rights were violated because the court did not permit oral argument as to her RICO claim. Importantly, the court sustained the first demurrer without leave to amend; therefore, Plaintiff was not entitled to amend the complaint to assert her RICO claim. Moreover, there is no due process right to oral argument. *Federal Communications Commission vs. WJR*, 337 US 265, 69 SCt 1097 (1949)

Undeterred, Plaintiff filed an action against the Defendants in the District Court for the Central District of California in June 1997. This action again involved allegations concerning Defendants' involvement in the 1991-1992 court-ordered escrow. See Request for Judicial Notice, Exh E. Judgment against the Plaintiff was entered on September 25, 1997. See *Powell v. Alleghany Corp.*, CV97-4312GHK (AJWx). Memorandum and Order (Sept. 25. 1997), attached to Defendants' Request for Judicial Notice. In dismissing the claims filed in that action, the court concluded that Plaintiff's claims were barred by the doctrine of res judicata. The court held that the general demurrer issued by the superior court constituted a judgment on the merits, that the same parties were involved in the state court actions,[3] and that the actions involved the same cause of action as the state court actions.[4]

II Res Judicata

The Court may properly consider the issue of res judicata where, as here, it is presented in a motion for judgment on the pleadings pursuant to Fed. R. of P. 12(c). See *Owens v Kaiser Foundation Health Plan, Inc.*, 244 F3d 708, 711, 715 (9th Cir. 2001) (affirming district court's granting of judgment on the pleadings in favor of defendants based on the doctrine of res

---

3. The one party that was not involved in the earlier actions was found to be in privity with the defendants in the earlier actions.

4. Specifically, the court held that the same "primary right" was implicated in the earlier actions: the right to proper execution of the court's order regarding the escrow of the sale of the home.

judicata). Federal courts must give a state court judgment the same preclusive effect as would be given that judgment under the law of the state in which the judgment was rendered. *See Migra v Warren City School Dist. Bd. of Ed.*, 465 US 75, 104 SCt 892 (1984). Under California law, res judicata, or claim preclusion, bars relitigation of a claim when a prior action adjudicated 1) the same claim, 2) resulted in a final judgment on the merits, and 3) the party against whom the claim is asserted was a party to or was in privity with a party to the prior action. *Cal State Auto Ins. Ass'n v Superior Court*, 50 Cal.3d 658, 268 Cal. Rptr. 284 (1990); *Clemmer v Hartford Ins. Co.* 22 Cal.3d 865, 151 Cal. Rptr. 285 (1978); *Victa v Merle Norman Cosmetics, Inc.*, 19 Cal.App. 4th 454, 24 Cal. Rptr. 2d 117 (1994).

A. The Same Claim

California follows the "primary right" theory of what constitutes a cause of action. Under this theory, a claim, or "cause of action" is based on the harm suffered, not the particular legal theory asserted by the litigant. *Peiser v Mettler*, 50 Cal.2d 594 (1958). The primary rights theory provides that a "cause of action" is comprised of a "primary right" of the plaintiff, a corresponding "primary duty" of the defendant, and a wrongful act by the defendant constituting a breach of that duty. *Crowley v Katleman*, 8 Cal.4th 666, 34 Cal. Rptr. 2d 386 (1994). The violation of a single primary right gives rise to but a single cause of action. *Id.* As far as its content is concerned, the primary right is simply the plaintiff's right to be free from the particular injury suffered. *Id*

"Even where there are multiple legal theories upon which recovery might be predicated, one injury gives rise to only one claim for relief." *Id.* at 668-69. The primary right theory applies when a previous action has resulted in a final judgment on the merits and a defendant in a second action asserts that the second action is precluded under the principles of *res judicata. Id.*

Upon review of the complaint filed in the present action, the court concurs with Judge King's observation in the previous federal action that the same "primary right" was implicated in all the earlier actions: the right to proper execution of the court's order regarding the escrow of the sale of the home. Therefore, because Plaintiff's claims in the present action address the same primary right that was at issue in the three previous actions, the "same claim" element of *res judicata* is met in this action.

B. Final Judgment on the Merits

The Court sustained Defendants' demurrers in the state court actions. "In California, a judgment entered after the sustaining of a general demurrer is a judgment on the merits, and, to the extent that it adjudicates that the facts alleged do not establish a cause of action, it will bar a second action on the same facts." *Palomar Mobilehome Park Ass'n v City of San Marcos,* 989 F2d 362 (9th Cir. 1993) (citing *Crowley v Modern Faucet Mfg. Co.*, 44 Cal 2d 321, 34 [sic] (1955)). Accordingly, Plaintiff's claims in the state court actions resulted in a final judgment on merits.

C. Same Parties or Those in Privity

This court observes, as did Judge King, that the parties to the present action are the same parties or those in privity with the parties in the state court actions. The present case names John Rau as a Defendant; Rau was not a defendant in the state court action. However, as Judge King noted, John Rau, as a newly appointed president of Chicago Title Company, is in privity with the defendants in the state court actions. Plaintiff also adds a new entity to the present action "Chicago Title Corporation, 1998 Spinoff, through John Rau, President and CEO." This entity, as described by Plaintiff, is in privity with the Chicago Title Defendants in the state court actions. Therefore, Plaintiff's claims are asserted against the same parties or those in privity with the same parties against whom the claims were asserted in the state court actions.

Because all the elements of *res judicata* have been met, Plaintiff is barred from relitigating her claims by virtue of the state court judgment. Accordingly, the Court hereby **GRANTS** defendants' Motion for Judgment on the Pleadings.

III. Motion for Sanctions

Defendants move for sanctions pursuant to Fed.R. Civ.P. 11 and Local Rules 27 and 27A. Sanctions are not proper under Rule 11 because Defendants have failed to comply with the notice provisions of that Rule. An often ignored provision of Rule 11 states that a motion for sanctions pursuant to Rule 11 must be served on the offending party twenty-one days before

it is filed with the Court. Fed. R. Civ. P. 11(c)(1)(A). this provision is meant to give the offending party the opportunity to voluntarily withdraw the paper, claim, defense, contention. allegation. or denial that is alleged to have violated Rule 11. *Id.* Because Defendants have not complied with the requirements for bringing a motion for sanctions pursuant to Rule 11 cannot be made.

Defendants also move for sanctions pursuant to Local Rules 27 and 27A. Local Rule 27A concerns vexatious litigant and is addressed separately, below. Local Rule 27 authorizes the Court to impose monetary sanctions if the Court finds a violation of any of the Local Rules. Defendants have pointed to no Local Rule that Plaintiff has violated. Therefore, the Court denies Defendants' Motion for Sanctions pursuant to Local Rule 27.

IV. Vexatious Litigants

Defendants have moved to have Plaintiff declared a vexatious litigant. Local Rule 27A addresses vexatious litigants:

> 27A.1 POLICY - It is the policy of the Court to discourage vexatious litigation and to provide persons who are subjected to vexatious litigation with security against the costs of defending against such litigation and appropriate orders to control such litigation....
>
> 27A.2 ORDERS FOR SECURITY AND CONTROL On its own motion or on motion of a party, after opportunity to be heard, the Court may, at any time, order a party to give security in such amount as the Court determines to be appropriate to secure the payment of any costs,

sanctions or other amounts which may be awarded against a vexatious litigant, and may make such other orders as appropriate to control the conduct of a vexatious litigant. Such such orders may include, without limitation, a directive to the Clerk not to accept further filings from the litigant without payment of normal filing fees and/or without written authorization from a judge of the Court or a Magistrate Judge, issued upon such showing of the evidence supporting the claim as the judge may require.

27A.3 FINDINGS - Any order issued under Rule 27A.2 shall be based on a finding that the litigant to whom the order is issued has abused the Court's process and is likely to continue such abuse, unless protective measures are taken.

27A.4 REFERENCE TO STATE STATUTE - Although nothing in this rule shall be construed to require that such a procedure be followed, the Court may, at its discretion, proceed by reference to the Vexatious Litigants statute of the State of California, Cal. Code Civ. Proc. §391-391.7.

Defendants suggest that the Court should make reference to California statutory law regarding vexatious litigants. Specifically, defendants suggest application of the definition of "vexatious litigant" found in Cal. Code Civ. Proc. § 391(b)(2), which provides:

(b) "Vexatious litigant" means a person who does any of the following:

> (2) after a litigation has been finally determined against the person, repeatedly relitigates or attempts to relitigate, in propria persona, either (i) the validity of the determination against the same defendant or defendants as to whom the litigation was finally determined or (ii) the cause of action, claim, controversy, or any of the issues of fact or law, determined or concluded by the final determination against the same defendant or defendants as to whom litigation was finally determined.

Cal.Code Civ. Proc. § 391(b);see also *First Western Development Corp. v Superior Court (Andrisani)*, 212 Cal. App.3d 860, 261 Cal. Rptr, 116 (1989) (holding that an unsuccessful defendant in unlawful detainer proceeding who filed five suits against opposing party, its officer, and attorneys, three of which attempted to relitigate issues previously raised in unlawful detainer action, was "vexatious litigant" within meaning of § 391(b)(2) and therefore, defendant could be required to post appropriate bond in pending and future suits).

The Court finds Plaintiff to be a vexatious litigant. She has filed meritless claims against the same Defendants in four separate actions, all four of these actions were based on the same primary right as defined by California Law on res judicata, and all four were based on the same underlying factual allegations: the 1991-1992 court-ordered escrow. The Defendants have incurred over $25,000 in legal expenses defending these meritless claims. Previous monetary sanctions have been ineffective in deferring Plaintiff's frivolous filings, and Plaintiff appears to be unable to pay these sanctions.

Accordingly, Plaintiff is hereby ordered to seek leave of the Court before filings complaint against any of the Defendants named in this action (or any party in privity with the Defendants) based on any of all of the facts alleged in the complaint, including any claims based on the 1991-1992 court-ordered escrow. Plaintiff must certify that the claims she wishes to present are brought in good faith and that they have not been raised in any previous actions. Plaintiff must also post security in the amount of $50,000 before filing such a complaint.

The clerk of the court is directed to reject Plaintiff's filings absent compliance with the requirements of this order.

V. Conclusion

The Court hereby grants Defendants' Motion for Judgment on the Pleadings. Defendants shall file, within ten days of the entry of this Order, a proposed judgment consistent with this order. Defendants' Motion for Sanctions is denied. Plaintiff has been declared a vexatious litigant based on the record as outlined in this order. she must comply with the requirements outlined in the previous section before she will be permitted to file any future claims against these Defendants.

IT IS SO ORDERED.
DATED this 21st day of June, 2001.

Signed: Florence-Marie Cooper
Judge, UNITED STATES
DISTRICT COURT

APPENDIX I: CIVIL MINUTES-GENERAL

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

Case No. CV 01-2546 FMC(CTx) Date: July 31, 2001

Title: PATRICIA H. POWELL V ALLEGHANY CORP. etal

PRESENT:

THE HONORABLE FLORENCE-MARIE COOPER, JUDGE

Alicia Mason Courtroom Clerk	Not present Court Reporter
ATTORNEYS PRESENT FOR PLAINTIFFS	ATTORNEYS PRESENT FOR DEFENDANTS
Not present	Not present

PROCEEDINGS: ORDER DENYING PLAINTIFF'S MOTION TO AMEND JUDGMENT (In chambers)

This matter is before the Court on Plaintiff's Opposition to Defendants' Proposed Judgment and Motion to Amend Judgment or Alter the Judgment. The Court deems this matter appropriate for decision without oral argument. See Fed. R. Civ. P. 78: Local Rule 7.11. Accordingly, the hearing set for August 6. 2001, is removed from the Court's calendar.

In substance, Plaintiff's Opposition and Motion merely set forth arguments that were raised in opposition to Defendant's [sic] Motion for Judgment on the

Pleadings. Accordingly, the Court hereby DENIES Plaintiff's Motion to Amendment [sic] Judgment or Alter the judgment.

Plaintiff also requests that the Court reconsider its Order declaring her a vexatious litigant. For the reasons stated in the Court's June 21, 2001, Order, Plaintiff has properly been declared a vexatious litigant. Accordingly, the Court DENIES Plaintiff's request.

Initials of clerk:

ENTERED ON ICMS Aug - 2001

Recording requested by and return to
Steven E. Comer B#154384
Baker & McKenzie
101 West Broadway Ste 1200
San Diego, CA 92101-3890
X Attorney for X judgment creditor

Name of Court: Los Angeles Superior Court
Street Address: 300 E. Walnut Street
City and Zip Code: Pasadena, CA 91102-1566
Branch: Northeast Dist. Pasadena
Plaintiff: Patricia H. Powell

Defendant: Alleghany Corporation, et al

Case No.
GC013802

ABSTRACT OF JUDGMENT

1. The x: judgment creditor
applies for an abstract of judgment and represents the following:

a. Judgment debtor
Patricia H. Powelll
111A Oliva Court
Novato, CA 94947
b. Drivers' license: G635233- California
c. Social Security No. XXXXXXX
d. NA
e NA

Date: March 25, 1998

Steven E. Comer /S/

2. a. x I certify that the following is a true and

correct abstract of the judgment entered in this action

b. (blank) A certified copy of the judgment is attached

3. Judgment creditor: Chicago Title Company, 925 B Street, San Diego, CA 92101

4. Judgment debtor (as name appears in judgment) Patricia H. Powell

6. Total amount of judgment as entered or last renewed:

$54,000

SEAL OF SUPERIOR COURT OF LOS ANGELES COUNTY

5. a. **Judgment entered on**: **Nov. 26, 1997**
b. renewal (blank)
c. renewal (blank)
JOHN A. CLARKE (stamp)

7. An execution attachment lien is andorsed on the judgment (blank)
8. A stay of enforcement has not been ordered by the court.

This abstract issued on Apr 07 1998
Clerk: C. Eggleston, Deputy (signed)

ABSTRACT OF JUDGMENT

Recording requested by and return to
W. Dean Cloud
17911 Von Karman Ave., Suite #300
Irvine CA, 92614
(949) 622 4343

(X) Attorney for (X) judgment creditor

Name of Court:	Los Angeles Superior Court
Street Address:	300 E. Walnut Street
City and Zip Code:	Pasadena, CA 91102-1566
Branch:	Northeast Dist. Pasadena
Plaintiff:	Patricia H. Powell

Defendant: Alleghany Corporation, et al

Case No.
GC013802

AMENDED **ABSTRACT OF JUDGMENT**

1. The x: judgment creditor
applies for an abstract of judgment and represents the following:

a. Judgment debtor
Patricia H. Powelll
111A Oliva Court
Novato, CA 94947
b. Drivers' license: G635233- California
c. Social Security No. XXXXXXX
d. NA
e NA

Date: April 2, 2002

W. Dean Cloud /S/
2. a. x I certify that the following is a true and

correct abstract of the judgment entered in this action.

b. (blank) A certified copy of the judgment is attached

3. Judgment creditor: Chicago Title Company, 925 B Street, San Diego, CA 92101

4. Judgment debtor (as name appears in judgment) Patricia H. Powell

6. Total amount of judgment as entered or last renewed:

$71,000.00

SEAL OF SUPERIOR COURT OF LOS ANGELES COUNTY

5. a. **Judgment entered on**: **11/26/ 1997**
b. renewal (blank)
c. renewal (blank)
JOHN A. CLARKE (stamp)

7. blank An execution blank attachment blank lien is andorsed on the judgment (blank)

8. A stay of enforcement has X not been ordered by the court.

This abstract issued on Apr 05 2002 1998
Clerk: Y. Simmons, Deputy (signed)

ABSTRACT OF JUDGMENT

Recording requested by and return to
W. Dean Cloud
17911 Von Karman Ave., Suite #300
Irvine CA, 92614
(949) 622 4343

(X) Attorney for (X) judgment creditor

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES NORTHEAST JUDICIAL DISTRICT

300 E. Walnut Street
Pasadena, CA 91101-1566
Plaintiff: Patricia H. Powell
Defendant: Alleghany Corporation, et al #GC013802

WRIT X EXECUTION (Money Judgment)
OF X POSSESSION OF: Real Property

(blank) SALE

1. To the Sheriff or any Marshal or Constable of the County of: Los Angeles
   You are directed to enforce the judgment described below with daily interest and your costs as provided by law.
2. To any registered process server: NA
3. (Name) Chicago Title Company
   is (x) judgment creditor whose address is shown on this form above the court's name
4. Judgment debtor:
   Patricia H. Powell
   111A Oliva Court
   Novato, CA 94947
5. **Judgment entered on: 11/26/97**
6. (blank) Judgment renewed on (date)

7. Notice of sale under this writ
   a. (x) has not been requested
   b. blank has been requested (see reverse)
8. (blank) Joint debtor
9. (blank) See reverse side for information on real or personal property to be delivered under a writ of possession or sold under a writ of sale
10. This writ is issued on a sister-state judgment

11. Total Judgment	$71,000
12. Costs after judgment **(per filed order)** or CCP 685.090	**blank**
13 Subtotal	$71,000
14. Credits	**blank**
15. Subtotal	$71,000
16. Interest after judgment **(per filed affidavit CCP 685.050)**	**$27,796.28**
17. Fees for issuance of writ	$ 7.00
18. Total	$98,803.28
19. To levying officer: add daily interest	$ 19.45

20. NA

SEAL OF
SUPERIOR COURT
OF LOS ANGELES
COUNTY

JOHN A. CLARKE (stamp)

Date issued: July 28 2001 By. Y. Simmons /s/

NOTICE TO PERSON SERVED: SEE REVERSE
FOR IMPORTATN INFORMATION

Reverse Side

9. (Blank) *Writ of Possession or Writ of Sale*:
Judgment was entered for the following:
a. (Blank) Possession of real property. The complaint was filed on (date) Check 1,2
(1) (Blank) The Prejudgment Claim of Right to Possession was served in compliance with CCP 415.46
The judgment includes all tenants, sub-tenants, named claimants and other occupants of the premises
(2) The {Prejudgment Clam of Right to Possession was NOT served in compliance with CCP 415.46
(a) $ was the daily rental value on the date the complaint was filed.
(b) The court will hear objections to enforcement of the judgment under CCP 1174.3 on the following dates (specify)
(blank)

c. NA
d. (Blank) Sale of real property

Short Title: Powell v Alleghany
Case No. GC013802

NOTICE

IMPORTANT LEGAL NOTICE TO
HOMEOWNERS

FILED
LOS ANGELES SUPERIOR COURT
MAR 04 2002

1. YOUR HOME IS ABOUT TO BE SOLD TO PAY OFF YOUR DEBTS

DATE TIME AND PLACE OF THE HEARING

Date: April 9. 2002
Time 8:30 AM
Place: Los Angeles Superior Court - Pasadena
300 E. Walnut Street
Pasadena, California - Dept. R

(Spanish Language)

(Letterhead) CHICAGO TITLE INSURANCE COMPANY
December 28, 2001

Los Angeles County Sheriff's Department
Court Services Division, Real Estate Sec.
110 N. Grand Ave., Rm 525
Los Angeles, CA
Attn: Reba Barnes
RE: GC 013802R

Dear Ms. Barnes:

We have received notice that on September 20, 2001 your department levied on real property located at 625 Esplanade Unit #205 C, Redondo Beach, California.
Your [sic] instructed to mail a Notice of Sale to the following senior lienholder:

Washington Mutual (Great Western Savings & Loan)
19850 Plummer Street
Chatsworth, CA 91311
Loan No. 0802461541

There is an outstanding tax lien, superior to our lien, in the amount of $128.84 recorded on October 21, 1992 as instrument No. 92-1943364 and filed against Steven Powell.

If you have any questions or need further information pleaase call me or Catalina Lewis at the toll free number listed below.
Very truly yours,
CHICAGO TITLE INSURANCE CO.
/S/

W. Dean Cloud,
Vice President cc: Patricia Powell

W. DEAN CLOUD, ESQ #119606
7911 Von Karman, Suite 300
Irvine, CA 92614-6253
(949) 622-4301
(949) 622-4132 (fax)

Attorneys for Judgment Creditor
CHICAGO TITLE COMPANY

FILED
LOS ANGELES SUPERIOR COURT
MAR 04 2002
John A. Clarke, Clerk
By J.L. Snyder, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES,
NORTHEAST JUDICIAL DISTRICT

Patricia H. Powell
Plaintiff,

vs

Alleghany Corp. et al
Defendant [sic]

Case No. GC013802

ORDER TO SHOW CAUSE WHY AN ORDER FOR SALE OF DWELLING SHOULD NOT ISSUE

Date: April 9, 2002
Time: 8:30 am
Dept: R
Hon. Michael J. Byrne

TO THE JUDGMENT DEBTOR AND ANY OTHER DEFENDANT(S) HEREIN:

The Court having considered the ex parte application of the Judgment Creditor for an Order for the Sale of

the dwelling commonly known as 625 Esplanade #205C, Redondo Beach, California 90277-4142 and for good cause,

IT IS HEREBY ORDERED that judgment debtor and defendant Patricia H. Powell appear on April 9, 2002 at 8:30 am in Department R of this court, located at 333 E. Walnut Street, Pasadena. California, to show cause , if any, why the attached ex parte application for sale of dwelling should not be granted.

IT IS FURTHER ORDERED that a copy of this Order to Show Cause, of the application of the judgment creditor and of the Notice of Hearing in the form prescribed by the California Judicial Council shall be served, personally or by mail, on the judgment debtor. Copies of each of these documents shall also be personally served on the occupant(s) of the dwelling or, if no occupant(s) is/are present at the time service is attempted, posted in a conspicuous place at the dwelling. Service and posting of these documents shall be accomplished at least 30 days before the date of the hearing set forth above.

Dated: 3/4/02 /s/

Honorable Michael J. Byrne

CERTIFICATE OF COUNSEL

I, Patricia H. Powell, certify that this petition for rehearing is filed to bring attention to the Court of defendants' intervening racketeering activity which petitioner was barred pleading in any federal district court now and forever and subsequently enforced by the Northern District of California.

The use of inherent powers under aegis of local rule contravening 28 USC §2071 by the Central Dist. and affirmance by the 9th Cir.'s use of res judicata to re-write jurisdictional requirements of civil RICO shifts the balance of power to inferior courts to declare the laws of the land.

This petition is presented in good faith and a firm belief in precedence of Supreme Court Decisions, the Constitution and Congressional intent in enacting civil RICO lending security to well-established law.

No contention or argument is presented herein which contravenes these authorities to the best of my knowledge.

21 October 2005

Patricia H Powell

Patricia H. Powell #133893
Member of the United
States Supreme Court Bar